

northern section, of which they themselves had obtained a sub-lease from the Stonehouse Coal Company, was being worked by other tenants of Mr Hamilton, in particular by means of Shawsburn pit No. 2. The pursuers necessarily knew this, because in arranging in 1895 with the Stonehouse Coal Company for a sub-lease of the coal in the northern section, they must have seen or known of the principal lease in favour of Messrs Sym, and must have known that the coal in the middle section was still being worked by Messrs Sym, who in point of fact continued to work it until 1901, when Mr Hamilton acquired their rights under the lease by purchase. They must also have known of the Swinehill Coal Company's workings in the southern section.

Now, it seems to me that the Lord Ordinar is right in holding that the pursuers' right to interfere with the working of the coal by the defenders must be judged of as at the date (1896) of their obtaining right to work and win the fireclay, and as at that date they could not have interfered to prevent Mr Hamilton's other tenants from working the coal, they are in no better or worse position now when the landlord has reacquired the coal and relet it to the defenders. The working of the coal and the fireclay certainly requires regulation in the interests of both parties, and if the pursuers had applied to the Court to adjust by remit or otherwise the terms on which the coal and the fireclay should be worked out together (which is the proper course) I should have been disposed to think that it would not have been beyond the power of the Court to entertain such an action and thus extricate the rights of parties. Indeed, I think that this summons might have been amended to that effect. But the only object of the action as it stands is to prevent the defenders from working the coal at all, and as I have already indicated the pursuers by their actings and knowledge in 1896 and subsequently are barred from demanding such a drastic remedy.

The only modification that occurs to me is that dismissal and not absolvitor might be the safer form of judgment.

**LORD JUSTICE-CLERK.**—The pursuers must I think succeed. The landlord has conferred rights on them by lease which are distinct and clear. I cannot doubt that what has been carried on under the coal lease is contrary to the rights given to the pursuers. It would be most advisable in the interests of all parties that some arrangement should be made by which the two classes of minerals should be worked. But if this cannot be accomplished, then I can see no legal answer to the pursuers' contention, first, that a distinct right to the fireclay has been conferred on them, and, second, that the work being done by the defenders substantially interferes with that right conferred by the pursuers' lease. I concur generally in the reasons stated by Lord Trayner for the judgment he proposes.

The **LORD JUSTICE-CLERK** intimated that Lord Young, who was present at the hearing but absent at the advising, concurred in the judgment of the Court.

The Court pronounced this interlocutor:—

“Recal the interlocutor reclaimed against: Grant decree against the defenders in terms of the declaratory conclusions, and also in terms of the conclusions for interdict: . . . *Quoad ultra* continue the cause.”

Counsel for the Pursuers and Reclaimers—Salvesen, K.C.—Guy. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Defenders and Respondents—Campbell, K.C.—Hunter. Agents—Ronald & Ritchie, S.S.C.

Tuesday, June 23.

## FIRST DIVISION.

[Lord Low, Ordinary.

### DARLING'S TRUSTEES v. CALEDONIAN RAILWAY COMPANY.

*River—Property—Foreshore—Boundaries—Estuary of River—Method of Determining Boundaries—Foreshore Opposite Bend of River.*

In a question regarding the rights to the foreshore between proprietors of lands on the south side of the estuary of the Forth, at a place where the estuary makes a bend or curve convex towards the properties on the south side, the Court, after a remit to a man of skill, found that the boundaries of the respective portions of foreshore effeiring to each property on the south side of the estuary in the circumstances should be determined by taking the actual *medium filum* of the estuary, and dropping perpendiculars to the *medium filum* where the actual *medium filum* was straight, or drawing *radii* to the centre of the circle formed by the curve where the *medium filum* formed a curve, from the extremities of the land boundaries of the respective properties at high-water mark.

This was an action at the instance of Alexander Nimmo of Westbank, Falkirk, and others, trustees under the antenuptial contract between Mr and Mrs Darling, and as such trustees proprietors of the lands of Candie, situated on the south shore of the Firth of Forth near Grangemouth, against the Caledonian Railway Company.

The conclusions of the action were for declarator in the following terms:—“That the pursuers, as trustees foresaid, are proprietors of the foreshore on the Firth of Forth *ex adverso* of the farm and lands of Candie, belonging to them, and situated near Grangemouth in the parish of Grangemouth (formerly the parish of Polmont) and county of Stirling. . . . (Second) It ought and should be found and declared by decree foresaid that the defenders the Cale-

donian Railway Company are not entitled to interfere with or make erections on or occupy the said foreshore *ex adverso* of the pursuers' lands or any part thereof without the consent of the pursuers; and the said defenders ought and should by decree foresaid be interdicted, prohibited, and discharged from interfering with or making erections on or occupying the said foreshore *ex adverso* of the pursuers' said lands, or depositing building or other materials or machinery thereon: And further, the said defenders ought and should be decerned and ordained by decree foresaid to remove from the said foreshore *ex adverso* of the pursuers' lands all erections made by them thereon, and all building and other materials, machinery, or implements deposited or brought by them thereon, and to flit and remove themselves therefrom, and leave the same void and redd to the end that the pursuers may peaceably possess the same: (Third) Or otherwise, and alternatively to the conclusions second above written, it ought and should be found and declared by decree foresaid that in respect the defenders the Caledonian Railway Company have entered upon a portion of the said foreshore *ex adverso* of the pursuers' lands extending to 46 acres or thereby, for the purpose of erecting works thereon in pursuance of the Caledonian Railway Act 1897, the said defenders are not entitled to remain in possession thereof without paying compensation to the pursuers for said portion of the foreshore and for the profits or interest in respect thereof under the provisions of the said Act and of the Lands Clauses (Scotland) Act 1845, and in particular sections 117, 118, and 119 of said last-mentioned Act."

The question in the case came to be how the boundaries of the portion of the foreshore belonging to the pursuers were to be ascertained.

In their condescendence the pursuers narrated their title, which was founded upon a feu-charter by the Abbot and Chapter of Holyrood House, confirmed by a Crown charter under the Great Seal in 1554, which further contained a novodamus of the subjects in favour of the vassal. The lands were described as bounded by "the water of Forth and Carron on the north part." The pursuers made the following averments:— "(Cond. 4) The lands belonging to the pursuers are part of the lands of Little Saltcoats, feued out and disposed under the said feu-charter and Crown charter of confirmation and novodamus, and they are bounded on the north by the Firth of Forth, near the junction of the river Carron with said Firth. Under said charters the pursuers are proprietors of the foreshore *ex adverso* of their said lands, and they and their predecessors have possessed the said foreshore upon their infeftments from time immemorial. *Inter alia*, they have possessed said foreshore by leading out drains and drain-pipes over the same for discharging the drainage of their lands thereon, and also by making and maintaining embankments against inundation by the sea. (Cond. 5) By the Cale-

donian Railway Act 1897 the defenders the Caledonian Railway Company are authorised to construct certain docks and other works partly on the foreshores of the Forth, to the south of where the river Carron joins the Forth. The said defenders commenced the construction of their new docks about November 1898, and the works are still in progress. The said defenders have not acquired or taken or given notice to acquire or take for the purposes of their undertaking any portion of the foreshore belonging to the pursuers as before mentioned. Notwithstanding this, the said defenders have entered on possession of the said foreshore belonging to the pursuers, and are proceeding to erect part of the works in connection with their said docks thereon. The pursuers have called on the said defenders to acknowledge their right of property in the foreshore, but they decline to do so, and they also decline either to remove from the said foreshore or to admit any right in the pursuers to receive compensation from them therefor."

In their defences the defenders averred:— "Admitted that the defenders have commenced the said operations, and that these are still in progress. Admitted that the defenders have served no notice to treat upon the pursuers, and do not recognise the pursuers' right to any portion of the said foreshore upon which they are erecting the said works. *Quoad ultra* denied, and explained that the Crown is in right of the said foreshore. There have been negotiations in the matter between the Board of Trade as representing the Crown and the defenders. The result of the said negotiations has been that the Board of Trade have undertaken to give the defenders a valid title to the area of foreshore required to be taken by them for the purposes of their said dock works."

The pursuers pleaded— "(1) In respect the pursuers have a right of property in the foreshore in question in virtue of their titles and possession condescended on, the pursuers are entitled to decree of declarator in terms of the first conclusion of the summons. (2) In respect the pursuers are proprietors of said foreshore, the defenders the Caledonian Railway Company are not entitled to enter upon or occupy or use the same without their consent, and the pursuers are entitled to decree against them in terms of the second conclusion of the summons. (3) In respect of the illegal actings of the said Railway Company as condescended on, the pursuers are entitled to decree of declarator, interdict, and removing against them as concluded for. (4) Alternatively, the pursuers, as proprietors of said foreshore upon which the said defenders have entered, are entitled to be paid compensation in terms of the statutes, and in particular sections 117, 118, and 119 of the Lands Clauses (Scotland) Act 1845."

The defenders pleaded, *inter alia*— "(4) The pursuers not being heritable proprietors of any part of the area of foreshore required to be taken by the defenders for the purposes of their said dock works, the defenders should be assoilzied."

Proof was allowed and led.

At the proof the pursuers adduced Mr Carfrae, C.E., Edinburgh, as a witness. He produced plans to show that the railway company in constructing their works had encroached on the foreshore belonging to the pursuers to the extent of about sixty acres.

Above the point where the river Carron joins the estuary of the Forth the estuary runs from Alloa in a south-easterly direction, while below the same point it runs down towards the sea in an easterly direction, thus forming a curve or bend convex to the southern shore. Mr Carfrae's plan was drawn upon the principle of taking the actual *medium filum* of the estuary, being a line running first south-east, then forming a curve, and then running east, and erecting perpendiculars from that *medium filum*, where it was straight, to the extremities of the land boundaries of the various properties on the south bank where they met high-water mark, and where the *medium filum* formed a curve taking the centre of the circle which nearly coincided with the *medium filum* at that part, and drawing *radii* from that centre which, when prolonged beyond the *medium filum*, passed through the extremities of the land boundaries at high-water mark. Opposite the lands of Candie the *medium filum* ran nearly west and east, but the curve in the estuary began about the western end of that part of the *medium filum*. The defenders led no expert evidence to contradict Mr Carfrae, but they produced a plan, and cross-examined Mr Carfrae to show that the proper method of dividing the foreshore was to take an imaginary line running from north-west to south-east representing the average direction of the *medium filum*, and dropping perpendiculars upon that line from the extremities of the land boundaries at high-water. The result of dropping perpendiculars upon the imaginary line chosen by the defenders was that the portion of foreshore so designed as effeiring to Candie did not include any part of the foreshore occupied by the defenders.

Mr Carfrae also suggested an alternative method of proceeding by taking two lines, one running nearly west and east and representing the average *medium filum* of the lower part of the estuary, and another running nearly south-east and north-west, representing the average *medium filum* of the upper reach, and dropping perpendiculars on these lines.

On 12th July 1902 the Lord Ordinary (Low) pronounced an interlocutor by which he decerned in terms of the first declaratory conclusion of the summons, and *quoad ultra* dismissed the action.

*Opinion.*—"I am of opinion that the pursuers have right to the foreshore *ex adverso* of their lands, because their title flows from the Crown, and the lands are described as bounded by the Water of Forth on the north.

"The question however remains, whether the works which the defenders are constructing encroach upon the portion of the foreshore belonging to the pursuers? The

pursuers maintain that the works are being constructed upon their foreshore to the extent of some sixty acres, and they have put in the plan, No. 37 of process, which has been prepared by Mr Carfrae, C.E., for the purpose of showing that that is the case.

"That plan is prepared upon the principle of taking the actual *medium filum* of the estuary and dropping lines perpendicular thereto from the land marches of the property.

"Now, I think that it is settled by the cases of *M'Taggart*, 5 Macph. 534, and *Laird*, 9 Macph. 600, that the proper method of ascertaining the boundaries of foreshore effeiring to a property situated upon an estuary is to take an imaginary straight line representing the average direction of the middle line of the estuary at low water between two points to be fixed by the Court, and dropping perpendiculars upon that line from the land marches.

"Now, it is plain that the imaginary straight line falling to be taken under that rule may differ very materially from the actual *medium filum* opposite to the property whose seaward boundaries have to be defined. Whether that will be the result or not must depend very largely upon what are the points, to be fixed by the Court, between which the average direction of the middle line of the estuary is to be taken. Here I have no means of forming any opinion upon the subject, but I see from the plan that the estuary takes a very considerable bend immediately after passing the pursuer's property, and if that bend fell within the points to be fixed, very probably the imaginary straight line to be drawn would differ so much from the actual *medium filum* that perpendicular lines drawn from it to the pursuers' land boundaries would be found to be entirely outside of the defenders' works. I cannot help suspecting that that would in fact be the result of taking an imaginary line between any two points which would fairly give the average direction of the middle line of the estuary, otherwise I do not understand why the pursuers should have perilled their case upon a method of ascertaining the boundaries which was not in accordance with a settled rule.

"It was argued, however, that in such circumstances as occur in this case the method adopted by the pursuers is the only one which would lead to a fair result, because if imaginary straight lines were taken, properties which were situated at the bend of the estuary might be cut off altogether from a large part of the foreshore, whereas by taking the actual *medium filum* each property would get its fair share of foreshore. I see a great deal of force in these considerations, but a definite rule having been deliberately laid down by the Court, I think that I am bound to regard the matter as settled so far as I am concerned.

"While, therefore, I think that the pursuers are entitled to declarator that they are proprietors of the foreshore *ex adverso* of their lands, it seems to me that in the

circumstances I must hold that it is not proved that the defenders' works encroach upon that foreshore, and dismiss the other conclusions of the summons, because as the pursuers elected to go to proof, I do not think that it would be competent for me, at all events without the consent of the defenders, to adopt any other method of ascertaining the boundaries of the pursuers' foreshore."

The pursuers reclaimed, and argued—It was clear that the pursuers' titles gave them a right to the foreshore *ex adverso* of their lands; the only question was how the boundaries of that foreshore were to be ascertained. While there was no fixed rule by which the Court could proceed in fixing the boundaries of the foreshore *ex adverso* of lands, the method proposed by the pursuers, and described *supra*, was in accordance with the principles adopted in *Campbell v. Brown*, November 18, 1813, F.C. 5; *Macdaggart v. Macdowall*, March 6, 1867, 5 Macph. 534; and *Laird v. Reid*, March 14, 1871, 9 Macph. 699.

The defenders argued that the pursuers had failed to indicate the proper method of defining the boundary. They cited the following authorities—*Keith v. Smyth*, November 7, 1884, 12 R. 66, 22 S.L.R. 50; *Gray v. Flemings & Richardson*, January 9, 1885, 12 R. 530, 22 S.L.R. 338; *Magistrates of Tain v. Murray*, November 23, 1887, 15 R. 83, 25 S.L.R. 81.

After the hearing, the Court, on 10th March 1903, pronounced the following interlocutor:—"Recall the interlocutor of Lord Low, dated 12th July 1902, except in so far as it finds, decerns, and declares in terms of the first declaratory conclusion of the summons: Find that it has not been proved that the boundary between the property belonging to the pursuers and the property to the west of that property in so far as the said properties consist of shore ground between high-water mark as now existing and low-water mark, has ever been ascertained or defined: Find that the said boundary should now be fixed upon the principle of ascertaining the average line of the centre of the river Forth at low-water opposite to the said properties and dropping a perpendicular on to the said average line from the northern end of the land boundary between the said properties at high-water mark as it existed before any artificial operations were made upon it by either party: Before further answer, remit to Mr John George Bartholomew, geographer, Edinburgh, to lay down on a copy of the Ordnance Survey map a straight line representing the average direction of the middle line of the river Forth at low water opposite to the northern end of the said original land boundary, and also to lay down on the said copy of the Ordnance Survey map a perpendicular from the northern end of the said original land boundary between the said properties to the said straight line, and to report; reserving in the meantime all questions of expenses."

On 15th March 1903 Mr Bartholomew reported as follows:—"In accordance with the terms of your remit of the 10th inst.

and our conversation of the 12th inst., I have provisionally drafted on the accompanying map the average *medium filum* opposite the Candie and Caledonian properties, and from it I have dropped a perpendicular to the northern end of the land limit between the said properties. I have drawn these lines according to my interpretation of your instructions, as follows:—

"Your interlocutor speaks of 'the average line of the centre of the river Forth opposite to the said properties'—this I take to be neither more nor less than a straight line representing the section of the *medium filum* opposite to the said properties. The length of this line I have determined by two points—the first being a perpendicular from the straight *medium filum* at C, as marked on accompanying plan, to the northern end of the eastern land limit of the Candie property at F; the second being a radius from the curve of the *medium filum* at A to what I take to be the north western limit of the Caledonian property at D. Between these points on the *medium filum* I have drawn the average line AC. Taking AC as the average centre line of the river Forth opposite the two properties, I have dropped a perpendicular from it at B to the northern end of the land boundary between the Candie and Caledonian properties at E, as shown on the 6 inch survey maps.

"Note to above—As the boundary B E thus delineated is a perpendicular from the average *medium filum* opposite the two properties, it does not show the Candie claim encroaching so much on the Caledonian claim as shown in Mr Carfrae's plan (No. 37 of process), in which the boundary is a perpendicular to the *medium filum* opposite the Candie property only, but on the other hand it encroaches on the foreshore of the property to the east. If the Powdrake property lying immediately to the west of Candie does not happen to be included in the Caledonian property, and it is not so included on the plans, I cannot see where its independent foreshore would come in according to the present division between Candie and Caledonian."

On 21st March 1903 the following letter was written, by the instructions of the Lord President, to Mr Bartholomew:—"The Judges of the First Division have now carefully considered your two letters of 15th inst. and the map which accompanied them, and in view of what you say, they would feel obliged if you would be so good as to lay down upon a map (1) the line which you think ought, for the purposes of such a question as the present, to be adopted as the *medium filum* of the river; (2) a line or lines showing how you consider that the foreshore boundary should be drawn with reference to it; (3) and if you could also show geographically upon the map how the application of the existing rule would affect the foreshore to the east of the property belonging to the pursuers; and (4) any other line or lines which you think would be instructive or illustrative in the present difficult question."

On 15th May 1903 Mr Bartholomew replied as follows:—"In accordance with the request contained in your letter of March 21st I have laid down on the accompanying map the various points which you have specified.

"1. I have marked as AB what seems to me the only practical *medium filum*, and it is moreover the actual *medium filum*. It seems to me to solve all the difficulties with regard to the division of the foreshore in a satisfactory manner, and I do not see how the problems can be solved completely in any other way.

"2. I have marked in red various lines CD, CD, showing how the foreshore boundaries applicable to the various properties on the river should be drawn with reference to the *medium filum* A B. These lines CD being radii to arcs of circles, or perpendiculars where the line is straight (for further reference to this point see my letter of March 15th).

"3. I have marked the dotted blue straight line E F to illustrate a possible average *medium filum* which might be considered a fair basis for the division of the foreshores opposite the Caledonian and Candie properties. From E F I have drawn dotted blue perpendiculars showing the limits of foreshore according to this method of division. I wish, however, to point out that this division would clash with and overlap the division on the basis of another possible *medium filum* G H, which is also an average *medium filum* applying to the upper adjoining section of the river. Thus, if such a division were adopted now for the properties M N O P on the lower section of the river, it would overlap the division of foreshore for the properties R S T X Y, which might take place at some future time on the basis of the *medium filum* G H, so that the properties X Y Z would be altogether excluded from participation in the foreshore as far as low-water mark.

"4. Another difficulty in connection with the adoption of the average *medium filum* principle would occur in cases where the perpendiculars from one average *medium filum* did not cross those from the adjoining *medium filum* a hiatus or gap would be left, and a section of the foreshore would thus be unallotted.

"On looking over the evidence already printed I find that the opinion expressed by Mr Geo. S. Carfrae, C.E., is practically the same as my view of the question."

On 23rd June 1903 the case was put out for advising.

LORD PRESIDENT—In the case of *Campbell v. Brown*, 18th November 1813 (F.C.), which related to the mode in which the line of the march fences of conterminous proprietors on the shore should be adjusted in gaining ground from the sea, Lord Meadowbank said—"The only invariable and universal plan which can be adopted is to take an average direction of the narrow sea from which perpendiculars should be dropped on the march stones of the different properties. On these perpen-

diculars parties would be entitled to form bulwarks, which would never interfere, and of which the direction would be precise and definite." With reference to this *dictum*, the Lord Justice-Clerk (Inglis) in the case of *M'Taggart v. M'Douall*, 5 Macph. 540, said that he thought that it was a just and sound rule as applicable to the case which the Court were there disposing of, but that it must be perfectly clear, and indeed was conceded in the course of the argument, that it was a rule which could not apply in all cases of fixing boundaries upon the seashore, because where the shore was upon the open sea, and there was no opposite coast or opposite bank, a different rule must be adopted, and then his Lordship proceeded to state that on the shore of an open bay the legal boundary was a perpendicular line let fall from the end of the land march upon a straight line representing the average line of coast between two points fixed by the Court. In the present case we have to deal neither with the case of an open sea coast or with that of a river running in a practically straight course, and therefore having its banks practically parallel, so that a line drawn from the end of the land boundary substantially at right angles across the river would give a fair and just division. The problem which we have to solve is how the line should be drawn where the river makes a large curve or bend opposite to and in the neighbourhood of the properties whose rights in the foreshore are in question.

We by our interlocutor of 10th March of this year found that the boundary should be fixed upon the principle of ascertaining the average line of the centre of the river Forth at low water opposite to the properties in question and dropping a perpendicular on to that average line from the northern end of the land boundary between the properties at high-water mark as it existed before any artificial operations were made upon it by either party. We did not find that that average line should be a straight line, but remitted to Mr Bartholomew to lay down on a copy of the Ordnance Survey map a straight line representing the average direction of the middle line of the river Forth at low water opposite to the northern end of the original land boundary, in order that we might see whether or how far the rule applicable to an open coast or to a river with practically straight and parallel banks could be applied to the present case.

It appeared from Mr Bartholomew's first report of 15th March 1903 and relative plan that the application of this formula in the present case would be attended with anomalies, and might work injustice, and we accordingly requested him to lay down upon a map (1) the line which he thought ought for the purposes of such a question as the present to be adopted as the *medium filum* of the river, (2) a line or lines showing how he considered that the foreshore boundary should be drawn with reference to it, (3) that he should show geographically upon the map how the application of the ordinary rule above mentioned would affect

the property to the east of the property belonging to the pursuers, and (4) any other line or lines which he thought would be instructive or illustrative in the present difficult question; and we received from Mr Bartholomew a second report (dated 15th May 1903) and relative plan, upon which he has laid down various lines which he explains in his second report. In particular he has marked with the letters A B what seems to him to be the only practical *medium filum*, and it is moreover the actual *medium filum* of the river. He states that it seems to him to solve all the difficulties with regard to the division of the foreshore in a satisfactory manner, and he does not see how the problem can be solved completely in any other way. The *medium filum* there adopted follows the bend of the river, and he has laid down in red various lines marked with the letters C D, showing how the foreshore boundaries applicable to the various properties on the river (including the property belonging to the pursuers) should be drawn with reference to the *medium filum*—these lines marked C D being radii to arcs of circles, or perpendiculars where the line is straight.

It appears to me that Mr Bartholomew's suggestions meet all the difficulties of the present case, and constitute the proper application to it of the principles already referred to. I therefore propose that we should approve of Mr Bartholomew's second report, and should find that the foreshore boundary between the property belonging to the pursuers and the ground to the west which has been acquired by the defenders is properly shown by the red line between them marked C D on his plan. I may add that this line is very much the same as the boundary suggested by Mr Carfrae in his evidence. The defenders did not in their proof suggest any boundary or lead any evidence as to the principle upon which they considered that the boundary between riparian properties should be drawn in a case like the present.

LORD ADAM concurred.

LORD M'LAREN—The only point which has been conclusively fixed by previous decisions is that in determining the areas of foreshore belonging to conterminous proprietors the area shall be marked out by drawing perpendiculars to one or other of two lines—the one being the natural coast line and the other an imaginary line taken as representing the average direction of the low-water mark. Now this method of drawing perpendiculars is only a particular phase of the well-known method of determining areas which has come down to us from the Greek geometers, and is constantly applied in all mechanical constructions in which it is necessary to determine areas with irregular boundaries. If I may say so, I think the method adopted by this Division of the Court in the last case, viz., that of drawing perpendiculars to a seaward line from the coast, is a better way of attaining the result than what seems to have been taken in *Lord Meadowbank's* case—drawing perpendiculars from

a seaward line to the coast. I think it would be an extremely difficult thing to draw perpendiculars to an irregular coast-line consisting of a great number of indentations, because it would be impossible to say what is the true direction of the coast-line at any point to which another line is to be taken perpendicular. But when perpendiculars are drawn to a seaward line which according to the decisions is either a straight line or a regular curve, there can be no difficulty in drawing perpendiculars to such a line or to a tangent to the curve at any point. As to how a seaward line is to be drawn so as to represent the general or mean direction of the coast, I agree with your Lordship that it is in accordance with common knowledge that no invariable rule can be laid down for drawing such a line. It is a problem to be determined by persons accustomed to map making, and accordingly in the case where a reference was made to Mr Keith Johnston, who was an eminent geographer in his day, the Court rejected Mr Johnston's proposal to lay down a general rule for the guidance of the Court in all similar cases, but adopted his determination of a line for that particular case. That was a line to be drawn upon an open sea-coast, and a straight line answered the purpose. In the present case we have to deal with the *medium filum* of a river having a sinuous course, and it is easy to see that it would be impossible to draw a straight line of the requisite length for determining a question of this kind which would truly represent the trend of the coast. In the present case the actual *medium filum* of the estuary *ex adverso* of the subject in dispute is a circular arc, and it is, I venture to say, obviously the just and true line to which the perpendiculars are drawn. I therefore agree with the judgment which your Lordship proposes.

LORD KINNEAR concurred.

The Court pronounced this interlocutor—

“Adhere to the Lord Ordinary's interlocutor of 12th July 1902 in so far as it finds, decerns, and declares in terms of the first declaratory conclusion of the summons: Find that the line marked C D in red letters on the plan No. 61 of process, as indicating the boundary between the portions of the foreshore belonging to the said properties pertaining to the pursuers and the defenders respectively, is the true and legal boundary between their respective portions of the foreshore, and decern, and *quoad ultra* continue the cause, reserving in the meantime all questions of expenses.”

Counsel for the Pursuers and Reclaimers—H. Johnston, K.C.—Cullen. Agent—Henry Smith, W.S.

Counsel for the Defenders and Respondents—Dundas, K.C.—King. Agents—Hope, Todd, & Kirk, W.S.