

appears to me that the case of *Whyte v. The Magistrates of Rutherglen* is not an authority for the proposition that under no circumstances can or should expenses be awarded to the persons who have successfully resisted an application of this kind. A similar application was made by the Burgh of Clydebank in 1890, and it was successfully resisted, the petition having been refused by Sheriff Blair in 1891, and the persons (or the interests) who were then successful have had to defend themselves again. I think it not doubtful that the Court has power to award expenses, and that this is a clear case for awarding them. Serious oppression might result if suburban owners or administrative bodies might be called upon to defend themselves again and again from such applications by a wealthy burgh. Whether this is a litigious or an administrative proceeding, the unsuccessful applicant should in the circumstances of the present case pay the expenses of the parties whom they convened, and who successfully defended themselves." In that case I am reported to have said—"My only doubt is whether, seeing that this is a statutory proceeding, our jurisdiction extends to the awarding of expenses incurred in the inferior court. That is a question on the terms of the statute, and it is never safe to express an opinion on the construction of a statute without having it read and hearing argument upon it. As this point was not taken, I do not need to consider it for the purposes of the case." I do not refer to my opinion as bearing on the merits of the question, but only because it is there pointed out that the distinction between the expenses of the local inquiry and the expenses of the appeal had not been argued, and because I do not think the Court intended to lay down a rule of general application which had not been tabled in discussion. But whatever was the ground of the decision, it appears to me that the general question as to expenses following the event in such applications was not raised and argued at the bar. I have every reason to believe that the judgment in the circumstances of that case was sound, and that it is an authority for the proposition that in a case of vexatious opposition expenses may be awarded in an administrative proceeding. The ground upon which the Lord President's judgment proceeds is that the application was vexatious, being the second application upon grounds quite insufficient to support the proposed extension. I should like to consider it, if possible, an open question, whether the question of expenses is wholly a circumstantial question to be raised afresh in every case, or whether it is a general rule that parties appearing before the Sheriff in such proceedings are not liable in expenses. But in any case I am prepared to hold that in the absence of such special circumstances as justify the Court in coming to the conclusion that the party puts himself in the position of a contentious litigant, there is no ground or authority for awarding expenses against such a party merely because his applica-

tion has been unsuccessful. I therefore think that the Lord Ordinary is right, and that his judgment should be upheld.

LORD KINNEAR concurred.

LORD DUNDAS—I agree generally with the Lord Ordinary and with what has been said by your Lordship in the chair. I think the Sheriff-Substitute was sitting in a purely administrative and not in his judicial capacity, and that he was not in the circumstances entitled to award expenses against Mr Liddall.

The LORD PRESIDENT and LORD PEARSON were absent.

The Court adhered.

Counsel for the Complainer (Respondent)—Johnston, K.C.—Macmillan. Agents—Somerville & Watson, S.S.C.

Counsel for the Respondents (Reclaimers)—Constable—Mercer. Agents—Tait & Crichton, W.S.

Tuesday, July 7.

SECOND DIVISION.

[Lord Salvesen, Ordinary.

WATSON AND OTHERS (OWNERS OF "HEBE" AND "THAMES") v. GIBSON & COMPANY (OWNERS OF "EILDON.")

Ship—Collision—Compulsory Pilotage—“Carrying Passengers between any Place in the British Islands and any Other Place so Situate”—Merchant Shipping Act 1894 (57 and 58 Vict. c. 60), sec. 604 (1).

The Merchant Shipping Act 1894, section 604 (1) enacts—"The master of every ship carrying passengers between any place in the British Islands and any other place so situate, shall, while navigating within the limits of any district for which pilots are licensed under this or any other Act, employ a qualified pilot. . . ."

The s.s. "Eildon" on a voyage from Leith to Dunkirk, carrying passengers all of whom were booked to Dunkirk, put into the Tees, and having taken up cargo at Cochrane's Wharf, Middlesborough, proceeded up the river towards Dent's Wharf, also in Middlesborough, for the purpose of loading additional cargo. *In itinere* she collided with a tug and its tow. The place where the collision took place was within the limits of a district for which pilots are licensed within the meaning of the Merchant Shipping Act 1894, sec. 604, and at the time she was in charge of a licensed pilot.

Held, in an action of damages brought against the owners of the "Eildon" on account of the collision (*rev. judgment of Lord Salvesen*), (1) that

the "Eildon" was not at the time of the collision "carrying passengers between any place in the British Islands and any other place so situate," and (2) that, accordingly, the defenders were not entitled to plead compulsory pilotage.

The grounds of judgment were:—

- (1) "Between" applied only to the termini of a voyage, the place of departure and arrival, and not to intermediate stopping places, so that the "Eildon" at no period in her voyage carried passengers "between" Leith and Middlesborough—Lords Stormonth Darling and Ardwall, *diss.* Lord Low.
- (2) The vessel having in fact arrived at Middlesborough before the collision occurred, she could not be said to be carrying passengers "between" Leith and Middlesborough—Lord Low, also Lord Ardwall.
- (3) Cochrane's Wharf and Dent's Wharf, between which the collision occurred, were not separate "places" within the meaning of the section—Lord Low, also Lord Ardwall.

James Watson and Others, owners of the Lighter "Hebe," and Mark Henderson Redhead, owner of the steam tug "Thames," sued George Gibson & Company, ship-owners, Leith, owners of the s.s. "Eildon," for £385 sterling representing damages sustained by the "Hebe" and the "Thames" in a collision with the "Eildon."

The defenders pleaded—"(2) *Separatim*—The defenders' vessel being at the time of the collisions in charge of a pilot whose employment was compulsory, and the collisions, if due to the fault of anyone on board the defenders' vessel, being due to his fault, the defenders should be assoilzied"—and made averments in support of that plea.

The pursuers pleaded, *inter alia*—"(3) The defenders' averments as to compulsory pilotage being irrelevant, their second plea ought to be repelled."

Lord Ardwall narrated the facts as follows:—"This is an action for damages in respect of a collision between the lighter "Hebe" and the steam tug "Thames," on the one hand, and the s.s. "Eildon" of Leith on the other. The "Eildon" was on a voyage from Leith to Dunkirk, but required to call at Middlesborough to fill up her cargo. She loaded at Leith, and took on board part of her cargo and a number of passengers. The passengers were all booked to Dunkirk, and paid their fares in respect of such booking. No passengers were booked from Leith to Middlesborough. When the "Eildon" arrived at Middlesborough, she first proceeded to a wharf known as Cochrane's Wharf, where she took in further cargo. She then proceeded up the river under the charge of a pilot to take on board other cargo at Dent's Wharf, and it was while she was in the river off Dent's Wharf that the collision complained off took place. After taking in more cargo at Dent's Wharf the "Eildon" proceeded to Dunkirk, where her passengers and cargo were all landed."

The Lord Ordinary (SALVESEN) on 18th

March 1908 repelled the third plea-in-law for the pursuers and allowed a proof.

Opinion.—[After narrating the facts]—"These being the facts, the defenders contend that section 604, sub-section 1, of the Merchant Shipping Act 1894, required them to employ a qualified pilot in the Tees, and accordingly that they are not liable for any negligence which he may have committed in the course of the navigation of the 'Eildon.' The material part of the section is in the following terms—[section quoted *v. sup. in rubric*]. In the case of the 'Osprey,' 5 F. (J.) 16, Lord Adam observed that this enactment was obviously made 'for the protection of human life.' It may have been so, but in that case it is singularly incomplete, because there is no enactment that on the return journey from Dunkirk to Middlesborough the vessel must employ a pilot in the Tees pilotage district, although the risk to the passengers from the vessel navigating these narrow waters is obviously the same whether the ship is approaching Middlesborough from Leith or from Dunkirk. I have, however, nothing to do with the anomalies of legislation, except in so far as they may have a possible bearing on interpretation; and I do not see how the purpose of the enactment can in this case afford any aid in construing the enactment itself. The 'Eildon' was admittedly carrying passengers between Leith and Middlesborough, and therefore the enactment would appear *prima facie* to apply. Does it then make any difference that none of the passengers were to be landed at Middlesborough; and is it implied in the section, as the pursuers argued, that a vessel is not carrying passengers between two British ports if the passengers are, in fact, booked to a foreign port, which is the ultimate destination of the ship? In my opinion it would be introducing an additional anomaly into this code of legislation if I were so to hold. The result would be that if a couple of passengers had booked from Leith to Middlesborough, the master would require to engage a pilot for the Tees, but if they were all going to Dunkirk he would be exempt from compulsory pilotage. Whether the object of the enactment be to protect human life, or merely to secure employment for home pilots, such a distinction would be equally meaningless. I have accordingly no difficulty in repelling the pursuers' third plea-in-law, and as the case was sent on their motion to the procedure roll, I shall find them liable in expenses since the closing of the record. On the pleadings as they stand I shall allow parties a proof, which will enable the pursuers, if they choose, to take the case further at this stage."

The pursuers reclaimed, and argued—The defenders were not entitled to plead compulsory pilotage, because at the time of the collision they were under no legal obligation to carry a pilot. Admittedly, if they were under such an obligation, it was solely because of the provisions of section 604 (1) of the Merchant Shipping Act 1894 (57 and 58 Vict. cap. 60). The question

therefore resolved itself into this, did section 604 (1) make the carrying of a pilot at the time of the collision compulsory? It did not. The "Eildon" was not carrying passengers "between any place in the British Islands and any other place so situate." In the first place, at no period of her voyage was she doing so within the meaning of the section, if the words of the section were taken and reasonably construed as they must be. The only places "between" which she was carrying passengers were Leith and Dunkirk, the places from which and to which the passengers had booked their passages and paid their fares—"*The Hanna*," 1866, L.R., 1 A. and E. 283; "*The Lion*," 1869, 2 P.C.A. 525. It was therefore incorrect to say she ever carried passengers between Leith and Middlesborough. See "*The Temora*," 1860, 1 Lushington, Admiralty Reports, p. 17. Even, however, if she had been carrying them between these places earlier on her voyage, she was not doing so at the time of the collision, for by that time she had arrived at Middlesborough, and in no sense could she be said to be between Leith and Middlesborough—"*The Maria*," 1867, L.R. 1 A. and E. 358; "*The Servia*" [1898], P. 36. The only remaining possibility was that while she was proceeding from Cochrane's Wharf to Dent's Wharf, she was proceeding and carrying passengers between two places in the United Kingdom in the sense of the section. This contention was sufficiently refuted by its own inherent absurdity. In the *Dublin Port and Docks Board v. Shannon*, 1873, 7 I.R. 116, founded on by the defenders in this connection, the two places were not in the same port.

Argued for the defenders (respondents)—The defence of compulsory pilotage was a good one, a pilot being obligatory, inasmuch as the vessel was carrying passengers between one place in the British islands to another place so situate. She was carrying passengers between Leith and Middlesborough. They were on board her between these places, and that was sufficient; that they were going on further, to Dunkirk, was immaterial—see "*The Rutland*," [1897] A.C. 333. At anyrate, even if she had arrived at Middlesborough, she fulfilled the requisite condition in respect of her voyage between Cochrane's Wharf and Dent's Wharf, each of which was a separate place in the British islands within the meaning of section 604—see *Dublin Port and Docks Board v. Shannon*, 1873, 7 I.R. Common Law Series, 116. It was important to bear in mind that the law as to compulsory pilotage was made in the interest of passengers, and was to be strictly construed—*Randall v. Renton* ("*The Osprey*"), December 10, 1902, 5 F. (J.), 16, 40 S.L.R. 273. "*The Servia*," *cit. sup.*, was not a decision under the Merchant Shipping Acts but under the Mersey Docks Acts. The following sections of the Merchant Shipping Act 1894 were also cited at the debate—secs. 596, 625 (5), 742.

At advising—

LORD STORMONTH DARLING—This action of damages arises out of a collision which took place in the river Tees between the lighter "Hebe," in tow of the steam-tug "Thames," and the s.s. "Eildon" of Leith. The sole question argued at this stage of the case is, whether under the circumstances narrated by the defenders the defence of compulsory pilotage is open to them. This question has been decided by the Lord Ordinary in the affirmative, and he has accordingly repelled the third plea-in-law for the pursuers and allowed a proof.

The admitted facts are that on the voyage in question the "Eildon" carried passengers as well as cargo; that she loaded at Leith, where she took on board part cargo and a number of passengers; that she proceeded, in the first instance, to Middlesborough to load further cargo there at Cochrane's Wharf and Dent's Wharf, but that the destination of the passengers and of the cargo was Dunkirk, none of the passengers having booked from Leith to Middlesborough; and that when the collision occurred she was in charge of a pilot licensed by the Tees Pilotage Commissioners, and was within the pilotage district over which their jurisdiction extends. The question turns on the true construction of section 604 (1) of the Merchant Shipping Act 1894, which is recited in its essential parts in the Lord Ordinary's opinion. His Lordship has decided that the compulsory pilotage is, in the circumstances, a good defence, chiefly on the ground apparently that the opposite view would introduce additional anomalies into this code of legislation, although in the earlier part of his opinion his Lordship says that he "has nothing to do with the anomalies of legislation except in so far as they may have a possible bearing on interpretation." I regret to be unable to agree with this view. I prefer to follow the kind of construction adopted by Lord Halsbury when dealing with a different phrase in the same statute in the case of "*The Rutland*," [1897] A.C. 333. There the House of Lords had to construe the meaning of "ships trading from any port in Great Britain within the London district to any port in Europe north and east of Brest," and it was argued that a ship laden with a cargo from the River Plate to Rotterdam, and with cattle for London, was not "trading" from London to Rotterdam within the meaning of the statute when she had discharged the cattle in London and was proceeding on her voyage from London to Rotterdam without having taken in any fresh cargo in London. Lord Halsbury held that it was a very forced construction to "sub-divide minutely" the act of trading into each particular thing that was being done, and he rejected the argument that the word "trading" must mean carrying goods from each port of departure to each port of arrival. The judgment was unanimous.

Now, applying the principle of reading words in a statute according to their ordinary and natural import—which Lord Watson in the same case laid down as the proper

principle to apply—I ask what is the ordinary and natural import of the words “every ship carrying passengers between any place in the British Islands and any other place so situate.” Besides the statutory definition of “passenger” as including “any person carried in a ship other than the master and crew, and the owner, his family and servants” (sec. 267 of the Act of 1894), we have the decision of the Privy Council in the case of “*The Lion*,” 1869 P.C. Cases, 523, that the payment of a fare is necessary to constitute a passenger within the meaning of the Compulsory Pilotage sections of the Merchant Shipping Act of 1854, which are practically the same as in the later Act of 1894, and therefore that where certain persons were on board a vessel by invitation from the captain without the consent of the owners, but these persons had not paid, nor agreed to pay, any fare before a collision took place, they were not passengers within the meaning of the Act, so as to exonerate the owners from the damage occasioned by the pilot’s default (sec. 633, M.S. Act 1894). I deduce from this, that to make a man a passenger you must have a contract with the owners, made before the collision takes place. Then comes the statute which speaks of “passengers between any place in the British Islands and any other place so situate;” so it is not passengers in general, but a particular class of passengers, that are intended—passengers, that is to say, “between” two places, each in the British Islands. Can that, in the ordinary use of language, mean anything else than the place of departure and the place of arrival? And if the place of arrival be not a place in the British Islands but a foreign port, can sec. 604 apply at all? There may be no breach of contract in carrying the passenger to any number of ports in Britain, so long as he knows and agrees to the terms of the contract, but can he, whose ultimate destination is a port in France, be said to be a passenger between two places in Britain? Even if it were possible to get over that primary difficulty, is it possible to “subdivide minutely” (to use Lord Halsbury’s expression in the case of “*The Rutland*”) the description of the passage from Leith to Dunkirk, so as to describe it first as a passage from Leith to Middlesborough and then as a passage from Middlesborough to Dunkirk? But it seems to me that the idea of compulsory pilotage, as applying to the river Tees in a voyage where there were no passengers except to a foreign port, is excluded by the plain words of section 604 (1) of the statute, and that this view is enough for the decision of the case.

LORD LOW—If the collision between the “*Eildon*” and the “*Hebe*” had occurred after the former had entered the Tees, but before she arrived at Middlesborough, I should have agreed with the Lord Ordinary, and as your Lordships are of a different opinion, I shall state shortly the grounds upon which I would have done so.

The provisions of section 604 (1) of the Merchant Shipping Act 1894 are intended

for the protection of passengers, and in my humble opinion the construction which your Lordships put upon the enactment would to a large extent defeat its object. If there had been a single passenger to Middlesborough on board the “*Eildon*” upon the voyage in question, and if, as I am now assuming, the collision had occurred before the “*Eildon*” arrived at Middlesborough, I do not think it could be disputed that it would have been compulsory upon the master to take a pilot on board when he entered the Tees. But (according to the view taken by your Lordships, if I rightly understand it) because that single passenger was awaiting, all the passengers were deprived of the security which the employment of a pilot is supposed to give, and which the statute intended that they should have. A construction of the enactment which would lead to such a result does not commend itself to my mind as likely to have been what the Legislature intended, and I should not be prepared to adopt it unless the language used, when fairly read, admitted of no other construction.

The words requiring to be construed are, “Every ship carrying passengers between any place in the British Islands and any other place so situate.”

Now the “*Eildon*” was undoubtedly carrying passengers, and therefore the question is narrowed to this, whether she was carrying them *between* two places in the British Islands? It would, I suppose, be conceded that Leith is a place and that Middlesborough is a place within the meaning of the enactment. Therefore when the accident occurred (upon the assumption I am making) the “*Eildon*” was “carrying passengers,” and, as matter of fact, she was carrying them “between” two “places” in the British Islands. If the statute had said *from* a place in the British Islands to any other place so situate, there would have been more difficulty, because the words “from” and “to” would have suggested, on the one hand, the place of embarkation, and on the other, the destination of the passengers. I think that the word “between” was used for the very purpose of excluding that idea, and that the true construction of the enactment is that when a ship is carrying passengers, and is in fact carrying them between two places in the British Islands, even although their voyage may have commenced before the first place was reached, and may be prolonged beyond the second place, it is compulsory for the master to take a pilot while navigating within the limits of any district for which pilots are licensed.

But then when the collision happened the “*Eildon*” was not in fact carrying passengers between Leith and Middlesborough, because she had already arrived at Middlesborough, and any passengers for Middlesborough would in ordinary course have left the ship before the collision took place. The question remains whether Cochrane’s Wharf and Dent’s Wharf, both at Middlesborough, are separate places within the meaning of the enactment. I

am of opinion that they are not. Looking to the context and the purpose of the enactment, I think "place" means a place where passengers are taken on board and disembarked. In that sense Middlesborough is a place, but different wharfs at Middlesborough are not places, and when the "Eildon" was shifting from one wharf to another at Middlesborough for convenience in loading cargo, she was not, in my opinion, carrying passengers between places in the British Islands within the meaning of the enactment. If her destination, after leaving Middlesborough, had been another port in the British Islands, the question might not have been so clear, because it might have been contended she had completed her voyage to Middlesborough and had commenced her voyage to that other port. Any such argument is, however, excluded by the fact that her next port of call was Dunkirk.

I therefore agree with your Lordship that, upon the defenders' own statement, the defence of compulsory pilotage is not open to them.

LORD ARDWALL—[*After narrative of facts quoted supra*].—The defenders state as a defence that at the time of the collision the "Eildon" was in charge of a pilot whose employment was compulsory. The Lord Ordinary has held that it was. Against this judgment the pursuers have reclaimed, and, accordingly, the question submitted for determination at this stage of the case is whether it was compulsory on those in charge of the vessel "Eildon" to employ a qualified pilot in the river Tees. Section 604 (1) of the Merchant Shipping Act 1894 provides as follows— . . . (*quotes, supra in rubric*) . . . The question, accordingly, comes to be, Was the "Eildon," when the collision occurred, carrying passengers between Leith and Middlesborough; or between Cochrane's Wharf, Middlesborough, and Dent's Wharf, Middlesborough; or between Leith and Dunkirk? If within the meaning of the Act either of the first two alternatives be answered affirmatively, then it would appear that the employment of a pilot at the place the collision happened was compulsory. If the last alternative be answered in the affirmative, and the other two in the negative, then such employment was not compulsory.

The first remark that occurs to me is that the clause must be read as a whole, and that the meaning which the words would naturally convey to any ordinary person must be regarded as their true meaning; the direction to employ a pilot was intended for masters of ships and not for lawyers or logicians.

Now, when a ship is described as carrying passengers "between" one place and another, I take it that in ordinary language it is the termini of the passenger's journey or voyage that are designated and not any stopping places in the course of such journey. To illustrate my meaning, suppose that a person is travelling by the East Coast route from Edinburgh to London, he would in ordinary language be described

as a passenger "between" Edinburgh and London, and although physically and in point of actual fact he was travelling for a part of the journey between Newcastle and York, it would not convey a true impression to say of such passenger during that stage of the journey that he was a passenger between Newcastle and York.

Similarly, if a ship is carrying passengers from Leith as one terminus to Dunkirk as the other terminus, I think the ship cannot, according to the ordinary use of language, be said to be carrying them to Middlesborough or to any other place either within or without the British Islands. Yet the Lord Ordinary has found that the "Eildon," with no passengers on board except some bound for Dunkirk, was carrying these passengers between Leith and Middlesborough within the meaning of the Act, though such passengers never landed at Middlesborough or ever left the ship till they reached Dunkirk. He does not seem to decide whether the ship at the time of the collision was carrying passengers from Leith to Middlesborough or not. It appears to me that in no view can it be predicated of the ship that at that time she was so engaged, because so far as Middlesborough was concerned she was, on her reaching Cochrane's Wharf, an arrived ship, her voyage was over and the passengers had reached their destination, so the only other alternative open which can justify the Lord Ordinary's conclusion is that the "Eildon" at the time of the collision was carrying passengers "between" (for that is the word used in the Act) Cochrane's Wharf and Dent's Wharf both in Middlesborough. I must say I consider that to predicate this of the "Eildon" at that time is to talk something very like nonsense, and I am certain that such a description of the employment of the "Eildon" at the time of the collision would never have occurred to a shipmaster or anyone else. This is a highly penal clause of the Act, and if the "Eildon" had not employed a pilot and the master had been prosecuted for a fine on the ground that he had failed to employ a pilot while his ship was carrying passengers between Cochrane's Wharf and Dent's Wharf, these being "places" within the British Islands within the meaning of the statute, I think the prosecution would have been laughed out of Court.

The plain commonsense meaning of the clause is simply this, that ships carrying passengers from one British port to another British port are to employ pilots when navigating within the limits of any district for which pilots are licensed, whereas ships carrying passengers between a British port and a foreign port are not required to do so. The word "place" and not "port" is used, I suppose, in order to cover places outside of as well as inside of ports, but that does not affect the general meaning. Port is said in the definition clause of the Act (section 742) "to include place," but there may be places where passengers are disembarked outside of a port and yet within the British Isles.

I should suppose Iona is not a port, and yet thousands of passengers are landed there from steamships every year. I desire further to point out that the obvious and indeed the only sure test by which the master of any ship can determine whether his ship is in the ordinary meaning of the words "carrying passengers between one place in the British Islands and any other place so situate" is the destination of the passengers as entered in the ship's books or papers, and for their passage to which place they have paid the customary fares. In "*The Hanna*," L.R., 1 A. & E. 288, and "*The Lion*," L.R., 2 P.C. 525, and 2 A. & E. 102, payment of a fare was taken as the test of whether a person was or was not a "passenger" on board a ship within the meaning of the earlier Shipping Statutes, and I think that similarly the test of the place to which the ship is "carrying" any person is the place to which such person has paid his fare.

I am therefore of opinion that at the time the collision occurred the "*Eildon*" was not, according to the ordinary use of language or within the meaning of the statute, carrying passengers "between any place in the British Islands and any other place so situate," but was in the ordinary sense of the phrase carrying passengers between Leith and Dunkirk, and that accordingly it was not compulsory on the master to employ a pilot. Lord Low supposed the case of the "*Eildon*" carrying one passenger to Middlesborough, and pointed out that it was hard that for want of that one passenger the others should be deprived of the safety afforded by the employment of a pilot. But the presence of that passenger would have altered the whole case and made the section applicable, with the result that the passengers to Dunkirk would have obtained a protection which under the statute they were not entitled to.

I am accordingly of opinion that the Lord Ordinary's interlocutor should be recalled, the third plea-in-law for the pursuers sustained, and the second plea-in-law for the defenders repelled, and that *quoad ultra* the parties should be allowed a proof of their averments and the pursuers a conjunct probation.

The LORD JUSTICE-CLERK was absent.

The Court pronounced this interlocutor—

"Recal the said interlocutor reclaimed against; Sustain the third plea-in-law for the pursuers; Repel the second plea-in-law for the defenders; *Quoad ultra* remit the case to the Lord Ordinary to allow the parties a proof. . . ."

Counsel for the Pursuers (Reclaimers)—Murray—Horne. Agents—Boyd, Jameison, & Young, W.S.

Counsel for the Defenders (Respondents)—Scott Dickson, K.C.—Carmont. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Thursday, July 9

SECOND DIVISION.

[Lord Guthrie, Ordinary.]

SLEIGHS v. SLEIGH'S FACTOR.

Trust—Judicial Factor—Agent and Client—Law Agent—Factor's Firm Acting (1) in Loans by Factory to their own Clients, (2) for Beneficiaries of Factory Subsequent to Payments by Factor, and (3) for Guardians of Beneficiaries—Fees and Commission Received by Factor's Firm.

A solicitor was appointed judicial factor on a trust estate. He lent part of the factory funds on heritable security to clients of his firm, and the firm acted in the matter and received the usual fees from the borrowers. The firm also did certain work for the guardians of the beneficiaries and for the beneficiaries themselves when of age, such work being in connection with the receipt and subsequent employment of the respective sums of income paid by the factor from time to time to the guardians or the beneficiaries, and the preparation of the deeds required through the beneficiaries having applied for an advance of capital.

Held (rev. judgment of Lord Guthrie) that the judicial factor was not bound to account to the factory estate for the commission and fees received or charged by his firm for so acting.

The late James Hume Sleigh, sometime Secretary and Treasurer of the Bank of Bombay, died in Edinburgh on 26th June 1899. He left a will, dated 30th October 1896, whereby he conveyed his whole estate to trustees, and a codicil, dated 1st January 1898. Mr Sleigh was survived by his three children—Edgar Hume Sleigh, Charles Hope Sleigh, and Marie Edgar Sleigh—who were all in minority. By his will the truster directed that the income of an equal share of the residue of his estate should be paid to each of his three children, the capital being settled for each child's issue. The truster also appointed his sister Miss Jane Slight, and his brother-in-law Dr Henry M. Church, as guardians of his children. Miss Slight and Dr Church accepted office as guardians. The trustees appointed by the truster having declined to act, Alexander Yeaman, W.S., Edinburgh, was on 4th November 1899 appointed judicial factor on the trust estate. On 22nd January 1907 the beneficiaries under the trust presented a petition for recal of the appointment of the judicial factor and for the appointment of new trustees. On 26th February 1907 the Lord Ordinary (GUTHRIE) recalled the appointment of the judicial factor, and remitted to the Accountant of Court to examine his accounts.

A note of objections to the factor's accounts was lodged for Edgar Hume Sleigh, Charles Hope Sleigh, and Marie Edgar Sleigh. The note of objections stated,