

saying that that must mean an action of maills and duties, because no other process is prescribed for entering into possession, and therefore it might be said that the ordinary procedure known to the law is that which is to be followed. But when we read that provision as part of the Registration of Leases Act, we find, that the statute itself provides a special proceeding for entering into possession, because the sixth clause sets out in terms the specific method by which a creditor is to enter upon possession of the lands and heritages and to uplift the rents from any sub-tenant. I take it to be a general rule of law that when an Act of Parliament creates a new right and at the same time prescribes a new method of procedure for giving effect to it, anyone who desires to take advantage of the Act must follow strictly the prescribed procedure. The pursuer has not followed the procedure but has gone outside the terms of that statute, and has adopted a form of procedure which it does not recognise, and therefore I am of opinion with your Lordship that this proceeding falls.

LORD DUNDAS—I am of the same opinion, and I do not think I can usefully add a word to what your Lordships have said.

The LORD PRESIDENT and LORD PEARSON were absent.

The Court sustained the appeal and dismissed the action.

Counsel for the Pursuer (Respondent)—Dickson, K.C.—D. M. Wilson. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for the Defender (Reclaimer)—Dean of Faculty (Campbell, K.C.)—Munro. Agents—Clark & Macdonald, S.S.C.

Saturday, July 11.

FIRST DIVISION.

[Lord Johnston, Ordinary.]

M'LEAN v. HART.

Reparation—Slander—Judicial Slander—Privilege—Malice—Averment of Facts and Circumstances.

In an action of damages for judicial slander, where the statement complained of is pertinent to the action in which it is made, the pursuer must aver facts and circumstances from which malice can be inferred.

A, who had been the co-defender in an action of divorce by B, in which B had obtained decree although the co-defender was assoltized, brought an action of damages against B for judicial slander on these averments; that in the divorce action B had falsely, recklessly, maliciously, and without any cause, stated in the record of that action—"In consequence of the information elicited by

the pursuer from the defender, the pursuer has made inquiries and has ascertained, and now avers, that "upon certain dates" the defender misconducted herself with the co-defender, and that the co-defender is the father of the child which was born to the defender"; that no such inquiries had been made; that the only thing connecting A with the alleged adultery was a written confession by the wife, which, as was known to B, she was at the time repudiating, and which had been instigated by B with the view of obtaining the divorce. *Held* (rev. judgment of Lord Johnston, who had allowed an issue) that the action was irrelevant, and the defender assoltized.

Scott v. Turnbull, July 18, 1884, 11 R. 1131, 21 S.L.R. 749, approved and followed.

Observations (per Lord M'Laren) on the amount of privilege accorded to written pleadings as compared with that accorded to oral advocacy.

On 4th March 1908 William C. M'Lean, apprentice baker, Bo'ness, brought an action against Patrick Campbell Hart, C.E., Glasgow, in which he claimed £500 as damages for judicial slander.

The pursuer averred—" (Cond. 3) On 21st January 1907 the defender raised an action in the Court of Session against his wife, concluding for divorce on the ground of the adultery of his wife with the pursuer or some other male person to the defender unknown. In said action the pursuer was called as co-defender, and the defender averred on record that 'In consequence of the information elicited by the pursuer from the defender, the pursuer has made inquiries and has ascertained, and now avers, that upon Tuesday, 1st May 1906, and upon other dates during that month, and also in the month of April preceding, the defender (Mrs Hart) misconducted herself with the co-defender (pursuer), and that the co-defender is the father of the child which was born to the defender (Mrs Hart) on or about 11th January 1907.' These statements are false and calumnious, and were made by the defender recklessly, maliciously, and without probable or any cause. No inquiries whatever were made by the present defender, or on his behalf, relative to the pursuer's connection with the case, and the only communication he caused to be made to the present pursuer was in December 1906, when he endeavoured, through a private detective, to induce the pursuer to sign a similar confession to corroborate the said alleged confession by Mrs Hart. This the present pursuer refused to do. Further, the present defender never had any information connecting the present pursuer with his wife's alleged adultery, except a statement in one of the two documents referred to below, which document the present defender knew, at the time he took the oath of calumny, his wife was repudiating as false. Further, no evidence was attempted to be led at the trial against the pursuer. (Cond. 4) In said action the defender produced and founded on written

statements alleged to have been addressed to him by his wife on or about 23rd September 1906, and bearing to contain, *inter alia*, the following statement—'I, Bella Hart, confess to having on May 1st fallen pregnant with William M'Lean.' This was all that connected the present pursuer with the alleged adultery in this document. The other statement contained no mention of the present pursuer. With reference to defender's explanations in answer, it is averred that he knew perfectly well that his wife's condition might be due to himself. Denied also that the said documents were sent to the defender voluntarily by Mrs Hart, and explained that this was part of the arrangement between the spouses after mentioned. Explained that the defender took advantage of his wife's pregnancy, and the hysteria consequent thereon, and induced her to write the said alleged confession. (Cond. 5) The said Mrs Hart in her pleadings in said action denied that she had ever been guilty of adultery with the pursuer, and averred that the said letter or confession founded on by the defender was untrue, and written solely on the suggestion and at the instigation of the defender, and merely for the purpose of obtaining his consent to a separation. In point of fact the defender knew that there was no truth whatever in said alleged confession, and the same was suggested by him, and written at his instigation with a view to obtaining a separation, which at the time both spouses desired. Notwithstanding the defender's said knowledge, and the fact that his wife in said action denied adultery with the present pursuer, and explained the circumstances in which the said alleged confession was written, the defender persisted in his allegations against the present pursuer, and took upon himself the burden of proving the said statements made by him on record, and adopted same as his own. By the judgment of the Court the pursuer was assolizied from the conclusions of said action in so far as same were directed against him, and was found entitled to expenses against the defender. (Cond. 6) The foresaid statements were made by the defender of and concerning the pursuer falsely, calumniously, and maliciously, and were made without probable or any cause, and were admitted by him to have been so made when examined as a witness in the said action. At 1st May 1906 the pursuer was a boy of seventeen years of age, and was employed in a menial capacity in defender's service, and the foresaid statements made by defender concerning him were known by defender to be untrue, and they were made by defender recklessly, and in the knowledge that the said confession had been repudiated by his wife. There had never been the slightest familiarity much less impropriety between the pursuer and the defender's wife. Moreover, the defender persisted in said statements after his wife had stated on record the circumstances in which the so-called confession had been granted as aforesaid. Further, the defender knew that the child with which he

charged the pursuer of being the father had been born on 11th January 1907, and was a child which had the full period of gestation, and that his said wife had been absent in England from 5th to 25th April 1906, during which period intercourse between pursuer and her had been impossible."

The defender, *inter alia*, pleaded—"(1) The pursuer's averments are irrelevant and insufficient to support the conclusions of the action, which should accordingly be dismissed. (2) The statements complained of being privileged, and the defender having acted without malice, is entitled to be assolizied from the conclusions of the action."

On 6th June 1908 the Lord Ordinary (JOHNSTON) repelled the defender's first plea-in-law and allowed an issue.

Opinion.—"In this action, although as originally stated I do not think there was a relevant case set forth for the pursuer, I think that his amendments render it such that I must send it to trial. The circumstances are that the defender raised an action against his wife some eighteen months ago for divorce, and called as co-defender the pursuer in the present action, who was then in the position of his groom. He raised that action, as stated in the record in the present action as amended, basing it upon a written confession under the hand of his wife. It is now said that in the divorce action the present pursuer 'was called as co-defender, and defender averred on record that—"In consequence of the information elicited by the pursuer from the defender" (the defender in the passage I am reading means the wife, and the pursuer means the husband) "the pursuer has made inquiries, and has ascertained, and now avers, that upon Tuesday, 1st May 1906, and upon other dates during that month, and also in the month of April preceding, the defender misconducted herself with the co-defender, and that the co-defender is the father of the child which was born to the defender on or about 11th January 1907." As originally stated, the first part of that passage was not quoted, and the first part of that passage is what, I think, makes the amended record relevant, because it says—"In consequence of the information elicited by the present defender from his wife, he 'has made inquiries and has ascertained, and now avers,' definite facts.

"It is alleged now that no such inquiries were in fact made, that the husband ascertained nothing, and founded this averment of a specific act of adultery, and of intercourse continuing over two months, upon absolutely nothing but his wife's letter. That is the averment. It may be true or it may not. The statement to which I refer is—"This' (referring to the letter of confession) 'was all that connected the present pursuer with the alleged adultery in this document. The other statement contained no mention of the present pursuer. These statements are false and calumnious, and were made by the present defender recklessly, maliciously, and without probable or any cause. No inquiries whatever were

made by the present defender or on his behalf relative to the pursuer's connection with the case, and the only communication he caused to be made to the present pursuer was in December 1906, when he endeavoured through a private detective to induce the pursuer to sign a similar confession to corroborate the said alleged confession by Mrs Hart. This the pursuer refused to do. Further, the present defender never had any information connecting the present pursuer with his wife's alleged adultery, except a statement in one of the two documents referred to below, which document the present defender knew at the time he took the oath of calumny his wife was repudiating as false. Further, no evidence was attempted to be led at the trial against the pursuer.'

'The result of the trial was that the Lord Ordinary, while finding that there was enough in the conduct of the wife corroborative of her written confession to justify his granting decree of divorce, held that there was no evidence against the co-defender, and accordingly he was assoilzied. Now, the contention before me has been that there is no relevant averment of facts and circumstances from which malice can be inferred. It is quite true that in the case of *Scott v. Turnbull*, 11 R. 1131, the Court laid down what had been fully recognised before—but they laid it down authoritatively—that in a case of judicial slander where the statement is relevant to the action—and some judges think even where it is irrelevant, but at the same time pertinent—the pursuer must not merely aver malice, but he must aver a state of circumstances from which malice may be deduced; that it is not sufficient to use the adjectives 'false,' 'malicious,' and so on, but that there must be circumstances stated from which the malice may be deduced. The late Lord President Inglis puts it thus in the case referred to—'In order to displace the honest and proper motive of the defender and to show that the statement was made from an improper motive, I think there must be a statement of facts and circumstances from which malice can be inferred.' That is certainly the law, but it is stated, I think, very widely, and it is to be read in connection with the circumstances of each case. And a very few years afterwards, in the case of *Gordon v. The British and Foreign Metaline Company*, in 14 R. 75, there is a very important criticism and explanation by the Lord Justice-Clerk Moncreiff of the case of *Scott v. Turnbull*. He says—'Now, at this point I should wish to say a few words on the case of *Scott v. Turnbull*, in 11 R. 1131, and the general principle which that case involved. The objection here is that the mere allegation of malice, without a specification of the facts which would imply malice and would lead the jury to come to the conclusion that it existed, is fatal to the action. Now, I entirely agree in the view that was taken in the case of *Scott v. Turnbull*. Malice is in the breast of the party accused, and it cannot be known to the outer world unless there has

been some act that evinces malice, and from which the existence of malice is to be deduced. Consequently, when a man alleges malice against another in a privilege suit he must have some reason from which he has inferred its existence—some reason not in his own mind merely, but deduced from the outward acts or words of the person against whom the allegation is made. All that was laid down in *Scott v. Turnbull*—it has been frequently laid down before—was that the averment of malice should not be left on the bare allegation of its existence, that he should specify to some extent at least the outward acts, words, or circumstances which have led him to infer that the person acted maliciously. I think that is quite reasonable, because otherwise an allegation of malice may be a random suggestion for which the litigant alleging it has no grounds in fact. But I do not think that this case falls under that category. On the contrary, without saying in the least that the facts set out on the record necessarily lead to the conclusion that the proceedings in question were malicious, I think they are at all events facts which a jury are entitled to deliberate upon and decide whether they were in their view sufficient to infer malice.'

'That last paragraph gives what I believe to be the true and full explanation of the law upon the point. I may also refer to the case of *Beaton v. Ivory*, in 14 R. 1057, in which the late Lord President Inglis, referring to what he had already said in the case of *Scott v. Turnbull*, says that he did not intend to lay down a general rule in the terms broadly stated in *Scott v. Turnbull* as applicable to all cases. I think that this indicates that he concurred with the views expressed by Lord Justice-Clerk Moncreiff in the case I have last quoted. But there are two subsequent cases—the case of *Campbell v. Cochrane*, 8 F. 205, and the anonymous case *A v. B*, in Court of Session Cases, 1907, 1154, in which words are used by some of the Judges which I cannot help thinking, cannot be received as of general application. In *Campbell v. Cochrane* one or more of the Judges in support of an averment of malice desiderate a statement of tangible antecedent circumstances. In the case of *A v. B* the Lord President, I think, asks for either something extrinsic or something to be inferred from intrinsic exaggeration of statement. I think all cases of this class have to be referred to their own particular circumstances. And taking the circumstances alleged here, and taking the law as laid down by Lord Moncreiff—to which I entirely subscribe—it seems to me that we have here an allegation of circumstances from which either the Court or a jury may perfectly well and fairly infer malice. There is nothing extrinsic of the case, there are no tangible antecedent circumstances, but there is, on the allegation now made, a reckless use of the pursuer's name in relation to this action of divorce, under circumstances in which the pursuer of that action, finding it necessary to lay hold of some name in order to justify his action, pitches

upon the present pursuer, and without inquiry, and without being able to justify himself in the result by leading any evidence whatever, asserts that he was engaged for weeks in an illicit intercourse with his wife. It seems to me that, looking to the class of case we are dealing with, if that allegation be true—I do not say that it is sufficient—but I say that at least it sets forth circumstances under which either the Court or a jury might perfectly fairly consider that the pursuer in the action of divorce had acted with such reckless disregard of the interest of a third party as to be equivalent to malice. I shall therefore repel the plea to the relevancy and send the case to a jury.'

The defender reclaimed, and argued—The pursuer's averments were irrelevant. This was an action of damages for judicial slander, and in such actions a pursuer was bound to aver facts and circumstances from which malice could be inferred—*Scott v. Turnbull*, July 18, 1884, 11 R. 1131, 21 S.L.R. 749; *Gordon v. British and Foreign Metaline Co.*, November 16, 1886, 14 R. 75, 24 S.L.R. 60; *Beaton v. Ivory*, July 19, 1887, 14 R. 1057, 24 S.L.R. 744; *Campbell v. Cochrane*, December 7, 1905, 8 F. 205, 43 S.L.R. 221; *A v. B*, 1907 S.C. 1154, 44 S.L.R. 870. No such facts and circumstances were averred here. It was not malice to aver on record the contents of a confession, provided that was not done with the view of injuring a third party. Statements which were relevant to an issue were clearly privileged, and if made in *bona fide* and in support of a pursuer's case, no action lay in respect of them. The statements complained of were so made, and the pursuer therefore had no relevant case.

Argued for respondent—*Esto* that in actions of damages for judicial slander facts and circumstances sufficient to infer malice must be averred, such facts and circumstances had been averred here. The pursuer's averments were sufficient to infer "legal" malice, for he averred that the statements complained of were made recklessly and without inquiry, and that the so-called confession was a trumped-up story instigated by the defender for his own purposes. The defender had recklessly and without any probable cause charged the pursuer with specific acts of adultery, and had persisted in these charges after their repudiation by his wife. These charges had not been established, for the Judge who tried the case had assuiled him with expenses. The pursuer therefore was clearly entitled to an issue.

LORD PRESIDENT—I confess that I think that this is an exceedingly clear case. I have nothing to add on the general law to what was laid down long ago by Lord President Inglis in *Scott v. Turnbull*, 11 R. 1131, and I venture to think that his Lordship's exposition of the law in that case is the law of Scotland, and has been so considered ever since. I think that the Lord Ordinary is quite mistaken when he argues, as he appears to do, that the

authority of that case has been trenced upon in any subsequent case. I think the Lord Ordinary's criticism is easily seen to be erroneous. His Lordship quotes the case of *Gordon v. British and Foreign Metaline Co.*, 14 R. 75. In *Gordon* there were facts and circumstances set forth on the record from which malice could be inferred. In other words, there was no displacing of the dictum of Lord President Inglis that there must be a statement of facts and circumstances from which malice could be inferred, but it was held in that particular case that the facts and circumstances were such as those from which malice could be inferred. The case, in other words, fitted the criterion which was laid down in the case of *Scott v. Turnbull*. The Lord Justice-Clerk in this case of *Gordon* ends his opinion by saying that the particular facts there were facts which a jury were entitled to deliberate upon, and decide whether they were in their view sufficient to infer malice. The Lord Ordinary says this last paragraph gives what he believes to be the full and true explanation of the law. I point out that that is not a general statement of the law, but only what the particular facts in that case were. And accordingly I cannot agree with the Lord Ordinary when he says that Lord President Inglis in the subsequent case of *Beaton v. Ivory*, 14 R. 1057, referring to what he had said in the case of *Scott v. Turnbull*, and saying that he did not intend to lay down a general rule in these terms applicable to all cases, by that indicated that he had given up his view as expressed in *Scott v. Turnbull* and adhered to some later view as expressed in *Gordon's* case. He did no such thing. What he did say in *Beaton v. Ivory* was to point out that his general observations in *Scott v. Turnbull* were directed to cases of judicial slander and judicial slander only, and that the general rule which he there laid down must not be applied to other cases of slander which were not judicial slander. The result is, as I stated to begin with, that I believe the criterion laid down by Lord President Inglis in *Scott v. Turnbull* is the just criterion and is absolutely unshaken as the law of Scotland.

When one comes to apply that criterion to the present case what does one find? A gentleman has a confession from his wife in writing, in which she says that she has committed adultery with a certain person, and upon that confession and founding upon it he raises an action against his wife for divorce. In that action he gets decree against his wife. I need scarcely remind your Lordships that one cannot get decree unless the judge before whom the case depends considers that the statement is not only relevant, but considers also that it is proved; and inasmuch as persons are not allowed to get decree of divorce if there is collusion, the judge has to turn his attention to that matter also; and here he has recorded his opinion that there is not a shadow of proof that there was any collusion between the parties. There was not enough evidence to convict the wife with-

out the confession, and it is of course trite law that the confession is only evidence against herself and is as nothing against the co-respondent. Accordingly for want of sufficient evidence the Lord Ordinary, I assume perfectly rightly, has assolizied the co-respondent, and now this co-respondent brings this action against the pursuer in the divorce action (the husband) for judicial slander.

I confess that I have extraordinary difficulty in following a course of reasoning which can possibly think such a statement, made in such circumstances and leading to such a result as it did in the first case, can be a statement which shows that malicious attitude or intention which is necessary for judicial slander. The Lord Ordinary has put the whole thing upon one sentence—that the pursuer in the divorce action pre-faced his statement that, having made inquiries, he made this charge, and he says that the pursuer in the present action denies that any such inquiries were made. I think that the statement “has made inquiries” is sufficiently satisfied by the production of the confession itself. But if it is not, who is going to judge of what particular amount of inquiry ought to be made, and I suppose, probably, some questions were asked; and even supposing every answer was unfavourable to the idea of adultery having been committed—that is to say, after the husband had asked all such servants as he could find, and everybody who had been with the wife and the co-respondent, and all of them had given a negative answer, and said they had never seen anything wrong—is there anything to prevent the husband founding upon the confession, and the confession alone, and what testimony he might himself supply, and going on to try the case? Supposing he had, on the other hand, missed out that sentence “having made inquiries,” would there be any difference? On the whole matter, I think that the case is more than clear, and that we should recal the interlocutor of the Lord Ordinary and assolizie the defender from the conclusions of the argument.

LORD M'LAREN—I concur with your Lordship in the chair, and only wish to repeat an observation which I made in the course of the argument. While the Courts have never gone so far as to extend to written pleadings the absolute privilege that attaches to oral advocacy, yet the distinction is necessarily a thin one. The chief difference seems to be that you take a judicial slander in a pleading out of the region of protection if you show that it is a statement which is not pertinent to the action. But where it is pertinent, and especially where it has been held to be relevant and a ground of action which satisfied the judge before whom the case was heard,—if you have these ingredients it is plain that it would be almost impossible to formulate a substantial case of malice proper to be submitted to a jury. I think Mr Morison was well founded in what he

said, that it was only in cases where a process has been concocted for the purpose of doing injury to some outside person that the Courts have found averments of malice sufficient to entitle a pursuer to go to a jury. But in the present case, while it is said, no doubt, that this was a feigned action—that the parties merely wished to be separated, and that the Lord Ordinary was imposed on,—it is not stated, and obviously it could not be stated, that this action of divorce was got up for the purpose of doing an injury to the present pursuer. It is, therefore, not within the class of cases in which an issue of judicial slander can be sent to a jury.

I must add that I have considerable difficulty too on the question of damage, because there does not seem to me—although that is not necessary to our judgment—it does not seem to me very likely that in a case of this kind damage which was capable of being estimated in money could ever be proved.

LORD KINNEAR—I entirely agree. I agree with Lord M'Laren that the case we have to consider is not exactly the same as the case that arises on the privilege of counsel or the privilege of witnesses. The question is what privilege the law allows to the parties to an action in stating the facts which may be necessary to support their pleas. Now, as I understand the law, if a litigant makes a relevant averment in support of his case, he is not answerable in damages to a third person merely because that averment may turn out to be inaccurate and to be injurious to the person complaining. The privilege which a litigant has—which is indispensable for the administration of justice—allows him to make such averments without subjecting himself to actions of that kind. But then I have no doubt he may be made liable if it can be shown that he made the averment complained of, not with the direct motive of supporting his own case, but with some indirect motive, as, for example, injuring the character of the person complaining.

Now, I cannot see that there is the slightest ground for saying that there is an averment here of any such indirect malicious motive. The defender's statement was absolutely relevant to the case, and the present pursuer does not say that he made it with any other purpose than that of supporting the case which he brought into Court. On the contrary, he avers that he did intend the averment to support his case and made it for that purpose. Therefore I am unable to see that there is any relevant averment of malice, or that there is any issuable matter on record.

I desire to add that I agree with what your Lordship in the chair stated that the law as laid down by Lord President Inglis in *Scott v. Turnbull*, 11 R. 1131, is absolutely untouched by any subsequent decision, and must govern this case.

LORD PEARSON was absent.

The Court recalled the Lord Ordinary's interlocutor and assoilzied the defender.

Counsel for Pursuer (Respondent)—Watt, K.C.—Spens. Agents—Bryson & Grant, S.S.C.

Counsel for Defender (Reclaimer)—Morrison, K.C.—Hon. W. Watson. Agents—Webster, Will, & Company, S.S.C.

Thursday, July 16.

FIRST DIVISION.

[Lord Salvesen, Ordinary.

CLARK AND OTHERS v. HINE AND OTHERS.

International Law—Maritime Lien—Lex Loci Contractus—Lex Fori—Disbursements on British Ship in Foreign Port—Judicial Sale of Ship in Scotland.

In an action of judicial sale of a ship registered in Scotland, and situated in Scotland at the date of the action, a party resident in New York lodged a claim for a preferential ranking in respect of certain disbursements made by him on the ship in New York, which he averred gave him a good lien on the ship, according to American law. *Held* that the question whether the party had a lien on the ship in respect of the disbursements made by him fell to be determined by Scots and not by American law.

Ship—Maritime Lien—Seamen's Wages—Payment by Third Party—Acquisition of Seamen's Lien without Assignment.

Held that no assignment of a seaman's lien on his ship for his wages is necessary to transfer the lien to a third party paying the wages.

Ship—Maritime Lien—Seamen's Wages—Payment by Third Party—Credit of Ship or Personal Credit of Owner.

Shipbrokers in New York, who were in communication with the owners of a British ship, and were requested by them to arrange for the execution of repairs on the vessel in New York, paid the sum due for repairs, and also paid wages due to the seamen. For the whole sums thus advanced the ship-owners accepted a bill drawn on them by the brokers, and the bill was renewed at maturity, and the renewed bill dishonoured when it fell due. *Held*, in an action of judicial sale of the ship, that the brokers must, in the circumstances, be presumed to have advanced the sums due in respect of seamen's wages, in reliance on the personal credit of the owners, and not on the credit of the ship, and that they therefore acquired no maritime lien on the ship for the sum so advanced.

On 25th November 1907 an action of declarator and sale of the steamship "Abbey Holme," registered at Maryport, and then

lying at Greenock, was raised by (1) Robert Clark, shipowner, Glasgow, a mandatory and attorney of William Brown, master of the ship, and assignee of certain members of the crew, and as an individual, with the consent and concurrence of William Brown, and (2) the said William Brown, against *inter alia*, (1) Wilfrid Hine, shipowner, Maryport, a partner of the firm of Hine Brothers, shipowners, and registered owner of the vessel, and the said Hine Brothers; (2) William Edward Mounsey, chartered accountant, Liverpool, trustee under an assignment granted by Wilfrid Hine and Hine Brothers for their creditors; (3) the Ardan Steamship Company, Limited, and the Scottish Investment Company, Limited, who held mortgages over the vessel; and (4) Messrs Bowring & Company, a corporation organised and existing under the laws of the State of New York, and having its principal office in the State of New York.

The pursuer Robert Clark averred that he had a maritime lien on the ship in respect of powers of attorney granted to him by the master, and of an assignation in his favour by certain members of the crew, which he received in consideration of various sums advanced by him to pay the wages of the crew, and certain liabilities or disbursements on the ship, made abroad by the master in the working of the ship, and for which the ship and owners thereof were liable.

Messrs Bowring & Company lodged defences, in which they averred, *inter alia*—"Explained that the said steamship arrived at New York in or about 5th December 1906 in a damaged and unseaworthy condition, making it absolutely necessary that she should go into dry dock for repairs. These defenders contracted with the owners on the credit of the ship to have it put into a seaworthy condition, and in connection with the requisite repairs, in the supply of necessaries to the ship, and in payment of wages then due to the crew amounting to 848 dollars, they expended a sum of 36,162 dollars. The supply of said repairs and necessaries was completed in or about the beginning of February 1907, and the sum due to the repairers and suppliers was paid by these defenders on 15th February 1907. The remainder of said sum of 36,162 dollars was expended by these defenders on or before said date. But for the supply of said repairs and necessaries by these defenders the ship would have been unfit to proceed. It was in reliance upon the credit of the ship that these defenders agreed to supply the funds for paying the crew and for furnishing the ship with necessaries and repairs, and in respect thereof they have a maritime lien upon the ship. Further, said agreement for supplying said funds was made in New York, and the rights incident to it fall to be determined according to the maritime law of the United States and the law of New York State. By these systems of law these defenders have a maritime lien upon the ship in respect of the sums expended by them in said repairs and necessaries, as