LORD M'LAREN—I do not doubt that this Court has power to grant authority to trustees to sell a heritable estate in Scotland. That would be so, for example, when a sale was necessary to enable the trustees to pay debts, or if there were any other unavoidable cause of sale. Certainly if this Court has not the power, no other Court could grant a power of sale of heritable estate in Scotland. But then it appears to me that these petitions have been brought without putting the Court in possession of the necessary material for the exercise of its jurisdiction. They are petitions under the Trusts (Scotland) Acts, and I agree with your Lordship in the chair that these Acts postulate the entire jurisdiction of this Court over the subject-matter of the case. We have no authority under the Trust Acts to determine any question of discretion or expediency relating to an English trust by reason of a part of the trust-estate happening to be heritage in Scotland.

I should not wish to suggest that there is any insuperable difficulty in obtaining the necessary powers. If the Court which has jurisdiction over the trust should make an order to the effect that a sale was necessary, and if the parties applied to the Court of Session, I should be disposed to give every facility for explicating the jurisdiction through our intervention.

LORD KINNEAR was absent.

In the case of Fox, the Court adhered to the interlocutor of the Lord Ordinary, and refused the prayer of the petition.

In the case of Sydney, the Court refused the prayer of the petition.

Counsel for the Petitioners Fox and Another—Younger. Agents—Constable & Johnstone, W.S.

Counsel for the Petitioners Sydney and Another—R. Macaulay Smith. Agent—Robert D. Ker, W.S.

HOUSE OF LORDS.

Monday, December 14.

(Before the Lord Chancellor (Halsbury), and Lords Watson, Shand, and Davey).

OGSTON *v.* ABERDEEN DISTRICT TRAMWAYS COMPANY.

(*Ante*, 20th December 1896, vol. xxxiii., p. 282, and 23 R. 480.)

Nuisance—Burgh—Obstruction of Streets—Title to Sue Authors of Nuisance or Local Authority.

A tramway company were in the practice of removing the snow from their track to the sides of the street by means of a snow-plough, and by the use of salt. The effect of this operation was to accumulate at the sides of the street a freezing mixture of snow and salt.

In an action for interdict against the company by a member of the public using the streets for horse traffic, *held* that the practice complained of was proved to be a nuisance, that it was not sanctioned by the local authority vested with the management of the streets, and that the pursuer was accordingly entitled to interdict.

Opinions (by Lords Watson and Shand) that it would not have been a valid defence that the nuisance was sanctioned by the local authority.

Judgment of the Second Division of the Court of Session *reversed.*

This case is reported *ante, ut supra.*

The complainers appealed.

At delivering judgment—

LORD CHANCELLOR—In this case the appellant, who has a place of business in Loch Street, Aberdeen, complains that the Aberdeen District Tramways Company obstruct the highways in the city of Aberdeen and create a nuisance therein whenever a snowstorm occurs in that city. As to the facts which give rise to the complaint there is no serious dispute, and I do not understand that the Lord Ordinary or the Second Division of the Court of Session entertained any doubt that a serious inconvenience to horse traffic was caused by the acts complained of. It appears that the Tramway Company when a snowstorm occurs in Aberdeen are in the habit of clearing the snow off their track and piling it at the side of their rails. The heaps of snow thus piled are left sometimes for as long a period as a week together, and for the purpose of facilitating their own traffic the Tramway Company scatter salt, which causes the snow in the groove of their rails to melt. The mixture thus created flows by gravitation into the heaps of snow already collected at the side and forms a freezing mixture, which I think it cannot be doubted causes injury to the horses and inconvenience to the traffic wherever and whenever the carriage traffic, other than that of the Tramway Company themselves, is compelled to force its way through the freezing mixture of salt and snow. It cannot be doubted that unless this can be justified by some legal authority this does constitute a nuisance to the highway.

If the question had arisen in England, I think some doubt might be entertained whether the obstruction as proved was such that a private person could sue without further proof of peculiar damage to himself, but that question does not arise according to the law of Scotland. Mr Ogston is entitled to sue in respect of an interference with the highway, which is applicable to him in common with the rest of Her Majesty's subjects.

It is sought to justify the proceeding of the Tramway Company, which I have described, by the powers conferred by their Act of Parliament, and if the matters do constitute a nuisance, that is the only justification which is to be found on this record.

I am of opinion that the Act of Parliament in question confers upon the respondents no such powers. It gives them the monopoly of using the tramway, where it is laid, with flange wheels, or other wheels specially adapted to run on a grooved rail, and except as otherwise specially provided by the Act, the track of the tramway is for all purposes to be and remain a part of the street or road. It is not suggested that, except in respect of the exclusive use to which I have referred, the Tramway Company have received any express authority to deal with the highways; but it is contended that in time of snow they can only continue the use of their tramway by scattering salt, and that if the municipal authority of Aberdeen were sufficiently prompt in sweeping up and carting away the freezing mixture thus created, the practice might be pursued without inconvenience to anyone. This may be perfectly true, but it is an absolutely untenable proposition that anyone may create a nuisance and shelter themselves from responsibility by suggesting that somebody else is under a legal responsibility to remove it. Each member of the public in turn might claim a right to create a nuisance by removing what was inconvenient to himself and set up the same defence.

The question would be a very different one if the road authority were the persons sued, and were setting up that the acts complained of were necessarily done in the general interest of the community, and in the course of clearing the streets from obstruction. I do not say that such a defence would be certainly complete; it would introduce questions of fact and degree with which I am at present not prepared to deal. That a snowstorm must cause some inconvenience to everyone may be true, but I cannot assent to the argument that a snowstorm in Aberdeen at some period of the winter is an extraordinary and unlooked for convulsion of nature for which it is unreasonable to suppose that provision should be made; and the examples of Edinburgh and Glasgow would seem to indicate that it is not beyond the resources of civilisation to make such provision; but, as I have said, I decline to enter into this field of inquiry.

If it were true, as the Lord Justice-Clerk assumes, that we were dealing here with what was done necessarily under the sanction of the public authority of the place, a great many of his Lordship's observations would be, I think, very pertinent, but that proposition is absolutely contrary to the fact I have already pointed out, that upon the record no such authority is pleaded. If it had been pleaded I think the proof would have failed; indeed, I think it is distinctly disproved. Not only did the Town Council of Aberdeen make a regulation against the practice, but by their letter of the 1st of February 1886 they had informed the Tramway Company that they had been advised that their operations in this respect were unwarrantable and illegal, and that if they did not desist the Council would be compelled to take legal proceedings against them. I do not think that the Town Council of Aberdeen have ever altered their position in this respect. It is true that long after this action was raised they deputed three gentlemen to give evidence upon the trial of the action on behalf of the Council in favour of the respondents. What legal operation such a transaction as this may be supposed to effect I am wholly unable to conceive. Adoption is of course out of the question. The acts complained of were not done, and could not purport to be done, under the authority of the Town Council; they were in fact done in absolute defiance of that authority. It is manifest, therefore, that if obstruction of the highway is proved, and a claim to persist in that obstruction insisted on, it is a proper case for interdict.

I am therefore of opinion that the interlocutors appealed from should be reversed, and I move your Lordships accordingly. The form of the order I take it would be this—to reverse both the interlocutors appealed from; find and declare that the appellant, the complainer, is entitled to have the respondents, the Aberdeen District Tramways Company, interdicted, prohibited, and discharged from removing snow from their tramway lines in the various streets of the city, which it is not necessary at the moment to mention, and from scattering salt thereon in the manner hitherto practised by them, to the nuisance of the appellant and of the public using the said streets for the purpose of traffic with horses; remit the cause to the Second Division of the Court to pronounce decree of interdict to the effect foresaid, and to find the appellant, the complainer, entitled to the expenses of process hitherto incurred by him in the Court of Session; and find the respondents liable to the appellant in his costs of this appeal.

LORD WATSON—I also am of opinion that the methods practised by the respondents of clearing and keeping open their tramway rails whenever there is a fall of snow is attended with injurious consequences, amounting to a legal nuisance, to those members of the public who have occasion to use the streets of Aberdeen for horse traffic. The evidence shows that on these occasions their first step is to clear their track, which is laid along the centre of the street, by means of a snow plough, an operation which increases the deposit of snow upon the other parts of the street. Their next operation, which is repeated from time to time, is to scatter salt upon their rails and in their vicinity, the object of which is to prevent snow or snow water from freezing in their grooves. The snow and salt in combination form a wet briny amalgam which does not freeze, although its temperature is considerably below the freezing point of water. The briny slush so produced is left on the street, and in course of time it gradually permeates a large portion and sometimes the whole of the street. It is in my opinion amply proved that the mixture thus diffused is injurious to horses standing or moving in

it, and that its saline element has a direct and noxious effect of its own if the skin of the animals coming in contact with it has been perforated or abraided.

The respondents have endeavoured to justify these proceedings by advancing a series of propositions, ingenious if not altogether consistent, which I shall notice in detail.

The first of these, which is the only defence stated by them in the record, upon the assumption that the allegations of the appellant have been established, is to the effect that their operations in clearing and keeping clear their lines, are "within their statutory rights." That plea, if well founded, would necessarily afford a good answer to the appellant's prayer for interdict. But neither the provisions of their special Act, nor those of the general Tramways Act of 1870, bear out that contention. Some statutory privileges they do possess which the law does not accord to the general public. They have the right to lay down and to maintain their grooved rails upon the public streets, and to use these rails for the passage of their tramway cars, to which, seeing that they cannot be deviated from the track, other vehicles meeting or passing must give precedence. But the respondents' use of their track is in no other sense exclusive. Any other vehicle which does not run on flanged wheels may use the track and the rails as freely as any other part of the street, whenever and so long as these are not actually occupied by the respondents' cars. Beyond the possession of these privileges, which are all that the statutes confer upon them, the respondents are in no better position, and have no higher right, than the appellant and other persons who use the public highway.

The respondents' next proposition was, that even if the operations complained of have not been expressly licensed by the statutes, they are sanctioned by implication, because they are necessary in order to the efficient carrying out of the purposes for which the respondents were incorporated by the Legislature. It was argued that tramway undertakings are authorised by the Legislature in the interest and for the accommodation of a large class of the community, who would be deprived of that accommodation at times when they most require it if the respondents were prevented from using the only means by which they can keep their tracks open and maintain a regular tramcar service during times of snow. The answer to that argument appears to me to be obvious and conclusive. In the first place, the statutes give the respondents no right to create a nuisance, and they have no such right at common law. In the second place, it is not shown that the nuisance complained of is in any sense necessary. Whilst I have little doubt that there may be other methods equally effective, I think the evidence very strongly suggests that the use of salt is involved in the only known methods which combine cheapness with efficiency. The experience of other cities appears to me to point to that result. But the same experience clearly demonstrates that salt may be effectively employed without occasioning a nuisance. Its injurious consequences may be obviated by the simple expedient of removing from the street immediately or within a reasonably short time after the application of salt, both the snow and the brine which transforms it into slush. It would, in my opinion, be extravagant to suggest that what can be done, and is done, either by the street authority or by the combined action of that authority and the tramway company, in Edinburgh, Glasgow, and Dundee, becomes an impossibility in the city of Aberdeen.

In the next branch of their argument the respondents accepted, but without admitting, the foregoing conclusion, their object being to shift the origin of the nuisance from themselves to the Town Council of Aberdeen. They maintained, upon that footing, that their use of salt does not necessarily lead to a nuisance, and that any nuisance which may thereby be created is entirely due to the fact that after salt has been applied the briny slush which it produces and the snow which it may come in course of time to affect, are not removed with sufficient expedition. If they were, no injurious consequences would follow. Then it was maintained that the duty of removal rested with the Town Council as the street authority, and that they were chargeable with the creation of the nuisance which resulted from their want of alacrity in the performance of their statutory duty. I see no reason to doubt that the Town Council, as constituting the road authority, are charged with the removal of snow from the streets under their jurisdiction, whenever the fall is so heavy as to obstruct traffic; but I am unable to come to the conclusion that their dilatoriness in the performance of that duty will relieve the respondents of the responsibility for the consequences of their own operations. The nuisance is ultimately and mainly due to the employment of salt, which is used by them and not by the Town Council. If they choose to employ means which, if certain precautions are not observed, will lead to nuisance, they must first ensure that these precautions will be taken. The Town Council are under no obligation, statutory or otherwise, to counteract the illegal proceedings of the respondents, and it is by no means clear that their delay in removing snow would create any nuisance, whilst it seems certain that if it had that effect the nuisance would be of a character different from and less aggravated than that which is complained of.

The last proposition submitted to us on behalf of the respondents is formulated by the second branch of the fourth reason in their appeal case, which is as follows—"Because the operations of the respondents are in themselves legal, and are sanctioned by the Street Cleansing Authority." In the record there is not to be found either a statement of fact or even a plea-in-law calculated to raise the latter contention. The

practice, which is becoming too common, of submitting for the consideration of this House points of controversy involving matters of fact which have neither been pleaded nor sent to proof in the Court below is not a commendable one. In the present instance the respondents have this excuse to offer, that the fact of the Town Council having either authorised or acquiesced in these operations, although it was neither pleaded nor remitted to probation, has been accepted and relied on both by the Lord Ordinary and by the Second Division of the Court, upon evidence which was not directed to the point.

The Lord Ordinary (Lord Low), after intimating an opinion that what the respondents have done "is to clear a part of the streets of snow, with the acquiescence and approval of the Town Council," comes ultimately to the conclusion "that it is sufficient for the decision of this case that the Town Council have come to be of opinion—and I see no reason to doubt that the opinion has been formed honestly and after due consideration—that it is, upon the whole, in the public interests that the respondents should be allowed to do a part of the work of clearing the streets by sending the snow-ploughs along the tramway lines, and melting the snow not removed by the ploughs by means of salt. And that that view is not an unreasonable one is, I think, shown by the fact that the same practice is adopted in Edinburgh, Glasgow, and Dundee." His Lordship omits to notice that the practice of clearing snow from tramway rails which is followed in Aberdeen differs from that which obtains in Edinburgh, Glasgow, and Dundee, in this essential respect, that in these cities it is carried on under conditions which practically obviate all risk of nuisance.

In like manner, the Lord Justice-Clerk, who delivered the opinion of the Second Division, consisting of himself with Lords Young and Trayner, observed, "If we were here to express our own opinions as to the propriety of using salt upon the streets, I for one would have very little difficulty in expressing my opinion most emphatically against such a proposition. But we are dealing here also with what is done necessarily under the sanction of the public authority of the place, and if they are of opinion that the only reasonable way of getting the street cleared so as to allow that traffic which Parliament has sanctioned to be kept in operation, I do not think we are the judges at all of whether they are right in that matter or not." Again, in the same connection, his Lordship said, "They (*i.e.*, the Town Council) have the responsibility and duty imposed upon them by the ratepayers of seeing that the roads are properly managed in all circumstances to the best of their ability. If the inhabitants of Aberdeen are of opinion that their affairs in that matter are being mismanaged by the Corporation they have the remedy in their own hands." The last remark is hardly to the point. The streets of Aberdeen are open to all the inhabitants of the realm, who have the same rights of user as the ratepayers themselves, and it is not a matter of course that the persons aggrieved by a nuisance must be municipal electors.

I am unable to concur either in the law which seems to be laid down in these opinions or in the facts which they assume. So far as the law is concerned, I entertain no doubt that the road authority are invested with large discretionary powers in regard to such matters as the cleaning of the streets, and the regulation of traffic upon them, and that a court of law would decline to interfere with the due exercise of their discretion. But in my opinion, in the case of a nuisance which the Legislature has not sanctioned, either expressly or by necessary implication, the road authority have no power or discretion either to commit it themselves or to authorise its commission by others. As regards the question of fact, an examination of those parts of the evidence which can be said to have any bearing upon it has satisfied me that the Town Council have not acquiesced in, and have not authorised, the operations complained of.

In dealing with these questions of acquiescence and authority it is necessary to keep in view that the respondents have all along asserted, and in this suit are still maintaining, their statutory right to do the acts complained of, irrespective of any licence from the street authority. So far back as February 1886 the Town Council, acting upon the advice of counsel and the report of a sub-committee, intimated to the respondents that their operations, in so far as they consisted of sprinkling salt upon their track in times of snow, and in clearing their rails by heaping the snow on either side of the track "were unwarrantable and illegal," and requested that they should discontinue those proceedings in the future. That intimation was never withdrawn, and the only answer which appears to have been sent to it was one or two letters of remonstrance, accompanied with a number of communications received by the respondents in reply to a circular addressed by them to the secretaries of various tramway companies throughout the country, all of which vindicate the practice of salting, and some of which go so far as to impeach the right of the road authority to interfere with it.

The respondents in September 1895 sent to the Town Council a copy of the record in this action, which had been closed on the 18th May 1895, together with a request that the Council should nominate representatives "to give evidence supporting the conduct of the Tramway Company." The Council remitted the matter to their Streets and Roads Committee, upon receiving whose report they resolved (1) that such of their members as the respondents should select should give evidence, on behalf of the Council, in favour of the Tramway Company; and (2) that a committee be appointed to meet the officials of the company and to report whether an arrangement could be effected "with the view of having

the streets expeditiously cleared during snowstorms." I think the position which was taken up by the Town Council is perfectly intelligible. They were willing to enter into any reasonable arrangement for clearing away the snow and slush which would remove all cause of complaint by the appellant and others, but they at the same time thought it better that the respondents should maintain at their own hand and at their own cost, the only plea which they had stated against the merits of the action. It is to my mind a very significant circumstance that neither in their record nor in any of their communications with the Town Council, is there the slightest suggestion made of acquiescence or authority. The attitude of the Council may savour of North-Country caution, but it must be remembered that if the respondents had succeeded in establishing their plea the Town Council and the public would have been alike at their mercy.

For these reasons I am of opinion that the interlocutor appealed from ought to be reversed, and that the cause should be remitted to the Second Division of the Court, with directions to grant the appellant an interdict in the terms proposed by the Lord Chancellor. I also think that the appellant ought, as proposed by his Lordship, to have the costs of his appeal in this House, and also the costs in both Courts below.

LORD SHAND—I also am of opinion that the appeal should be allowed in this case, for the reasons which have been already so fully stated as to render it unnecessary for me to add more than a very few observations.

I think it has been already proved, as a matter of fact, that a serious nuisance did exist and was caused by the respondent's company during the winter of 1894-5 in Aberdeen, as complained of by Mr Ogston. The learned counsel who appeared for the Tramway Company endeavoured to draw some distinction between the two operations of clearing away the snow from the part of the street on which their rails were situated and putting down the salt on the street in such large quantities, but it is plain to me that those two operations must be taken together. The nuisance was created as the result of those combined operations, viz., the way in which the streets were cleared, and the quantity of salt placed on them. That nuisance might have been obviated if the snow and slush had been immediately removed, or removed within a reasonable time after the salt had been used. It is clear, I think, from the evidence in regard to other towns that in Aberdeen the clearing of the streets has not been carried out with the promptitude and dispatch shown elsewhere. If it had been, there would have been an end to the complaint that is made here, and a complete answer to the action. I see no reason to doubt that the nuisance is not by any means one that must necessarily be caused and endured even in times of severe storm, and I cannot doubt that in future arrangements will be made by which any such nuisance will be obviated.

As to the other defence, that what was done had the sanction of the Town Council, I have only to say, referring to what has been so fully stated by my noble and learned friend Lord Watson, that in my opinion that defence is not made out in point of fact. I think the Town Council did not sanction the proceeding of the Tramway Company; but apart from that, I agree with the opinion which he has expressed, that even the Town Council themselves would not be entitled to continue and perpetuate a nuisance, and to defend themselves by saying that they were to be the judges in a matter of this kind. I think even if the Town Council as administrators of the streets were causing a serious nuisance of this kind, that the Court would have the power, and ought to exercise the power, of putting a stop to it.

LORD DAVEY—I am of the same opinion. I confess to some feeling of sympathy with the Tramway Company. In a time of snowstorm such as that which occurred in 1894-5 there must of necessity be some inconvenience and suffering to men and horses, and the directors of a tramway company might easily conceive that their first duty was to keep the tramway open for public traffic, and to avoid the general inconvenience that would be occasioned to the public particularly at that time by tramcars ceasing to run. But what we have to consider is, whether the complainer is entitled to the rights which he claims, and whether the respondents have infringed the rights of the complainer. He is entitled to have his rights protected, even if it were shown that a majority of the public who use the tramways were benefited by the acts of the respondents.

I cannot doubt that to pile up large heaps of snow on the highway was in excess of the respondents' rights, and was in law a nuisance. The Tramway Company had no more right to do this than any other inhabitant of the street would have had to pile heaps of snow on the tramway itself. In the same way with regard to the use of the salt—by the use of the salt in the manner in which it is proved in the evidence to have been used—the respondents produced a noxious mixture which they let loose upon the highway. That noxious mixture would not otherwise be there, and its presence, as I think is proved by the evidence, increased and aggravated to a serious extent the inconvenience and danger to horses incident to the snowstorm itself.

The only relevant defence that I can find pleaded is, that the operations of the respondents in clearing and keeping clear their lines were within their statutory rights. I can only say that that argument depends on whether it was an incident necessary to the statutory rights conferred upon them. They have no statutory right to commit a nuisance, and the only attempt to make out or support that plea was by arguing that the statutory power of maintaining their tramways necessarily in-

volved (and I say "necessarily" deliberately) the creation of this nuisance, and that in fact the statute has, if not expressly, yet impliedly, authorised the nuisance. I do not think that that is made out in this case, and I do not think there are any grounds whatever by which the respondents can maintain that the operations which I have held to be a nuisance were sanctioned or permitted by their Acts.

The respondents point to the analogy of what is done in other towns, and evidence upon this point seems to have impressed the Lord Ordinary. But I think it is impossible to read the evidence of Mr Young as to what is done in Glasgow, and of Mr Pitcairn as to how the streets are cleared in Edinburgh, without coming to the conclusion that the analogy is entirely against the respondents, and not in their favour. I observe that in Mr Young's evidence he says—"We all knew what to do, and did it." It seems to me that that is exactly what did not take place at Aberdeen. And I observe that Mr Pitcairn says—"We exercise more care now than we used to do." Well, perhaps the experience of the past, and the knowledge of what has been done in Edinburgh, may have a salutary effect in Aberdeen in the future.

Now, the Lord Ordinary and the Inner House seem to have thought that the case might be regarded for this purpose as if the Town Council had been the defenders or respondents. Indeed, the Lord Advocate and his learned junior, Sir Robert Reid, argued before us that the defenders were, in the operations complained of, agents of the Town Council, and that they acted by their authority. Now, I agree generally with the Lord Justice-Clerk's observations as to the amount of latitude and consideration to be shown to a public body entrusted with the duty of clearing the streets. They are entitled to exercise their discretion as to the time, the order, and the means to be employed, and if they are supine in the exercise of their power, that is primarily a question to be considered by those who elect them to act on behalf of the community. But the defenders are not the Town Council, and in my opinion they have wholly failed to show any ground upon which they can shelter themselves under the powers and immunities of that body. I need not refer again to the minutes of the Town Council, or to the correspondence which passed between them and the Tramway Company, which have been referred to by my noble and learned friend opposite (Lord Watson), but the effect left upon my mind is, that so far from acting under the authority of the Town Council, the Town Council, wisely perhaps, left them to fight their own action in the best way they could, and beyond permitting some of their body to give evidence (I should not have thought that permission was wanted to enable persons to speak the truth), I do not see that they interfered at all or intended to make themselves in any way responsible for the defence.

In this state of things, if it were merely a temporary interference with the highway which came to an end with the state of circumstances which occasioned it, and if there were no claim of right to do the acts complained of, your Lordships would not probably think it was a case for granting an interdict, but by their fourth plea-in-law the respondents claim a statutory authority for their operations, and therefore I am of opinion that the appellant is entitled to the interdict he asks for; but as it is quite possible that salt may be used for the purpose of clearing snow from the tramway (which cannot be easily cleared by any other means) without occasioning a nuisance, I think the interdict should be in the qualified form proposed by your Lordships.

Ordered that the interlocutors appealed from be reversed, and that it be found and declared that the appellant (complainer) is entitled to have the respondents, the Aberdeen District Tramways Company, interdicted, prohibited, and discharged from removing snow from their tramway lines in the Great Western Road, Holburn Street, Union Street, and George Street, in the city of Aberdeen, and from scattering salt thereon in the manner hitherto practised by them, to the nuisance of the apellant and of the public using said streets for the purpose of traffic with horses, and that the cause be remitted to the Second Division of the Court to pronounce decree of interdict to the effect foresaid, and to find the appellant (complainer) entitled to the expenses of process hitherto incurred by him in the Court of Session, and that the respondent is liable to the appellant in his costs of this appeal.

Counsel for the Appellant—The Dean of Faculty — Haldane, Q.C. — Abel. Agents —Grahames, Currey, & Spens, for Auld & Macdonald, W.S.

Counsel for the Respondents—The Lord Advocate, Sir Robert Reid, Q.C. — Dove Wilson. Agents — Martin & Leslie, for Morton, Neilson, & Smart, W.S.

Tuesday, December 15.

(Before the Lord Chancellor (Halsbury), Lord Watson, Lord Shand, and Lord Davey.)

M'NAB *v.* ROBERTSON AND OTHERS (CAMPBELL'S TRUSTEES).

(*Ante* March 11, 1896, vol. xxxiii. p. 497, and 23 R. 1098).

River — Lease — Grant of Ponds and "Streams leading thereto"—Water Percolating through Soil—Implied Obligation not to Divert Water.

A lease of a distillery included certain lands and two ponds, "together with the right to the water in the said ponds and in the streams leading thereto."

Held (*affirming* the judgment of the Second Division, the Lord Chancellor *dissenting*) that water percolating