and is now resident at Gympie aforesaid with him. The petitioner is not aware whether there was any marriage-contract entered into between Mrs Jeffrey and Mr Stewart. The said 12/64th shares of the said vessel still stand in the register of the port of Inverness in name of Mrs Jeffrey." "The 'Clachnacuddin' has been valued at £1000, and on this valuation, which it is believed is a correct one, the value of the said 12/64th shares is £187, 10s. Neither the said Mrs Phebe Jeffrey or Stewart nor her husband have, so far as the petitioner is aware, any other property in this country. In these circumstances the petitioner conceives it to be his duty to make the present application to your Lordships to prevent any dealings in the said 12/64th shares of the said ship till the said debt of £345, 15s. is paid. The petitioner intends forthwith to take such steps as he may be advised towards operating payment of the said sum from the said Mrs Jeffrey or Stewart and her husband."

He therefore prayed the Court to grant an *interim* order prohibiting any dealing with the said 12/64th shares for one month, and thereafter to interdict any dealing with the shares for one year from the date of the interlocutor ordering such prohibition, unless their Lordships should see cause before the expiry of the said period to withdraw such prohibition on an application by any parties interested in the said ship.

The Lords on 23d February 1882 pronounced this interlocutor:—"The Lords appoint this petition to be intimated on the walls and in the minute-book for eight days, and to be served on Messieurs Adam & Winchester, the known law agents of Mrs Jeffrey or Stewart, mentioned in the petition, and ordain them to lodge answers, if they any have, for behoof of their said client, within eight days after said service; meantime prohibit any dealing with the 12/64th shares of the ship 'Clachnacuddin' of Inverness, presently standing in the name of 'Phebe Jeffrey of Garmouth, in the county of Elgin, widow of the late James Jeffrey,' for one month from the date of this interlocutor, and decern *ad interim;* and grant warrant for serving the registrar of the port of Inverness with a certified copy of this interlocutor."

Answers were thereafter lodged by Messrs Adam & Winchester, S.S.C., for behoof of Mrs Phebe Stewart, denying, *inter alia*, the petitioner's averments in regard to the value of the vessel, and Mrs Stewart's indebtedness on account of her shares, stating that on a proper accounting nothing would be found due by Mrs Stewart, and submitting that the application was unnecessary and incompetent under the Merchant Shipping Act.

The Merchant Shipping Act 1854 (17 and 18 Vict. c. 104), provides (sec. 65)—"It shall be lawful in England or Ireland for the Court of Chancery, in Scotland for the Court of Session, in any British possession for any Court possessing the principal civil jurisdiction within such possession, without prejudice to the exercise of any other power such Court may possess, upon the summary application of any interested person, made either by petition or otherwise, and either *ex parte* or upon service of notice on any other person as the Court may direct, to issue an order prohibiting for a time to be named in such order any dealing with such ship or share; and it shall be in the discretion of such Court to make or refuse any such order, and to annex thereto any terms or conditions it may think fit, and to discharge such order when granted, with or without costs, and generally to act in the premises in such manner as the justice of the case requires; and every registrar without being made a party to the proceedings, upon being served with such order, or an official copy thereof, shall obey the same."

The respondents cited *Roy* v. *Hamilton & Company*, March 9, 1867, 5 Macph. 573; and *M'Phail* v. *Hamilton*, July 5, 1878, 5 R. 1017.

The Lords, without delivering opinions, refused the prayer of the petition, recalled the *interim* order made by said interlocutor of 23d February 1882, and granted warrant for intimating this interlocutor to the registrar of the port of Inverness.

Counsel for Petitioner—Jameson. Agents—Murray, Beith, & Murray, W.S.
Counsel for Respondents—Young. Agents—W. Adam & Winchester, S.S.C.

Wednesday, March 8.

FIRST DIVISION.

[Sheriff of Fifeshire.

HEGGIE *v.* NAIRN AND OTHERS.

Property — Water Rights — Accumulations in Mines—Lower Proprietor.

The tenants of mineral fields had been in use to carry away water accumulated in the mines by a level or tunnel to the sea, and allowed some manufacturers to divert a portion of the water to their works by means of an opening in the level at a point within the property of the owner of the minerals. In an action at the instance of a lower proprietor, through whose lands the level passed, to interdict the manufacturers from diminishing the supply which came down to him by enlarging the opening, the Court *held* that the pursuer had no legal title to object, in respect that the stream was artificial, and that the defenders had obtained the consent of the mineral owner and tenants to the operations complained of.

Prescription—Artificial Water-Course—Rights of Lower Proprietor in.

Question whether use for the prescriptive period would have given the lower proprietors a title to object.

John Heggie, residing at Auchtermuchty, presented a petition in the Sheriff Court of Fifeshire against Mrs Catherine Ingram or Nairn and others to have them ordained to cause the stream of water which had for time immemorial issued into the Denburn, near to the East Bridge, Kirkcaldy, and which the defenders had diverted from its ancient channel, to be returned to its ancient channel; to shut up and close the conduit or tunnel formed by them to the conduit of said stream under and across the said burn, so as to secure the flow of the water in the conduit as formerly; and to interdict them in all time coming from again interfering with the said conduit,

so as to prevent the stream of water running in its ancient bed, and its issuing otherwise than it formerly did into the Denburn. The facts upon which the question depended are taken from the interlocutor of the Sheriff-Substitute, and were as follows:—The pursuer was proprietor of a piece of ground on the south of the road leading from Kirkcaldy to Pathhead, and having for its western boundary the land belonging to Mr Robert Hutchison, and also the natural channel of the Denburn. A short distance above his property there had existed from time immemorial a weir, which diverted the whole water that comes down the Denburn, except in times of spate, along a covered conduit to the westward into the harbour at Kirkcaldy. Below the weir, and just above the pursuer's property, is the outlet of a mine or level which discharges into the natural or dry channel of the Denburn, and which was constructed at some time beyond the memory of man for the drainage of the minerals of the Dunnikier estate. This mine begins near the north-west boundary of that estate, where it is at a great depth below the surface, and comes down without much fall towards the sea in a south-easterly direction, passes under the Denburn at a point a little above the weir, and emerges below the weir at the south-east of the bridge by which the Kirkcaldy and Pathhead road is carried over the Denburn. The mine is wholly artificial, being built with masonry for a considerable distance from the outlet, while the rest is cut out of the solid rock. The water in the mine consists of the drainage of the Dunnikier mineral workings, augmented since 1861 by water sent down from the Raith mineral workings, in terms of an agreement between the proprietors and mineral tenants of the two estates. Some of it finds its way into the mine without pumping, but the greater part is pumped up by the mineral tenants from workings at a lower level. In 1874 or 1875 the defenders, who are manufacturers, enlarged a previously existing hole in the said mine at the place where it passes under the Denburn, and diverted by its means and by underground communications a great part of the said mine to their works, which lie at the west of the Denburn, and to the north of the road leading from Kirkcaldy to Pathhead. These operations were objected to at first by the Messrs Herd, who were the tenants of the minerals on the Dunnikier estate, but by an agreement dated November 1878 the defenders obtained their consent on payment of a sum of £10 a-year. In 1863 the pursuer erected a dyework on his ground, which was copiously supplied with the water coming from the mine. In consequence of the defenders' operations in enlarging the hole as stated, the pursuer's supply of water fell off and became insufficient.

The present action was brought forward to compel the defenders to restore matters to their former state.

The pursuer pleaded—"(1) The pursuer being proprietor of property on the east bank of the Eastburn or Denburn, is entitled to the use of the water in that burn as it flows past his property. (2) The pursuer and his predecessors having used the water in the Eastburn or Denburn from time immemorial, is entitled to prevent all acts done by others which shall have the effect of injuriously affecting his rights. (3) The defenders having, secretly and without authority, within the last seven years driven a mine underground across their several properties, under the railway embankment, under and partly across, or across, the bed of the Eastburn or Denburn and beyond it, and tapped or opened the conduit conducting the tributary stream of water aforesaid to the burn, and so deprived the pursuer of the water for his works, to which he had a real or prescriptive right, the pursuer is entitled to a decree to ordain the defenders to restore the water so abstracted to its former channel."

The defenders pleaded—"(4) The pursuer has no title to sue the present action. (5) He has not averred any valid right or title to the water in question which can be admitted to probation. (6) The water in the mine being under the will and control of the proprietor of the estate of Dunnikier, and those in his right, cannot form the subject of a real or predial servitude in favour of the pursuer's tenement. (12) The water in question being the product and property of persons who have sold or otherwise disposed thereof to the male defenders, they cannot be prevented from using the same for any lawful purpose they think proper. (15) The pursuer having no right or title to the water in the mine, or to require that water should be thereby sent or allowed to flow down to him, it is *jus tertii* to him to object to any operations by the defenders, and he has no title to insist in the prayer of the petition."

The Sheriff-Substitute (GILLESPIE) having considered the proof which was taken in the case, and having found the facts as stated above, found "that the pursuer did not aver any express grant by the proprietor of Dunnikier of the use of the water in the said mine, and that he had failed to show that his predecessors made use of the water prior to the erection of the dyework in 1863: Found in law that the pursuer not having instructed any right to the use of the said water by prescription or otherwise, had no right of action for its diversion; therefore dismissed the petition."

He added this note:—"While the use of a natural stream is a right incident to the ownership of the land past which it flows, which requires no grant, and is independent of any possession, an artificial water supply, whether by itself or as augmenting the flow of a natural stream, can only be the subject of an acquired right. The right to the use of an artificial stream is, in short, a servitude, the premises which get the benefit of the water supply being the dominant tenement, and the lands through which the water is successively conducted, the servient tenements. Like other servitudes, such a right can only be acquired in one of three ways—(1) by express grant; (2) by implied grant on the division of a property (3) by prescription. In the present case the artificial character of the water supply in question is established beyond doubt. Not only is every part of the channel constructed by the hand of man, but the water which flow in it is brought to the surface by the operations, past and present, of man. The pursuer does not allege any express grant of this water supply . . . .It is not suggested that 'implied grant' is applicable to the present case. Prescription alone remains for consideration. The defenders contend that as this water supply is under the control of the mineral tenants, no length of possession could give the pursuer a right to insist on its continu-

ance. The pursuer concedes that he cannot compel the mineral tenants to continue pumping the water from their workings along this mine for his benefit. But it is another question (and one expressly reserved in the case founded on by the defenders—*Irving* v. *Leadhills & Co.*, March 11, 1856, 18 D. 833) whether, supposing the pursuer had used this water for valuable purposes, such as a mill or manufactory, for the prescriptive period, the mineral tenants would be entitled, for purposes unconnected with the working of the minerals, to dispose of the water otherwise. The Sheriff-Substitute will assume—else there is an end of the case—that by prescriptive possession the pursuer could acquire a qualified right in the water at this mine sufficient to entitle him to challenge such operations as the defenders.

"The question, then, which remains for decision is, whether the pursuer has established prescriptive possession of the water? He has certainly used the water for eighteen years, but there is no evidence that before 1863 his predecessors appropriated the water in any way. The Sheriff-Substitute may say that he does not attach much importance to the fact that the actual site of the pursuer's dyework was a piece of waste ground. The pursuer's property forms part of what was a larger property, but there is no evidence that the owners of that larger property used the water for manufacturing purposes, or indeed any purposes. The Sheriff-Substitute cannot hold that the mere fact of this artificial water supply having been allowed for time immemorial to flow down the Denburn channel gives the adjoining proprietors a right to demand that it shall continue to do so. Granting that the flow has been more or less continuous, although this is not beyond dispute, he thinks that the view which the pursuer must maintain is contrary to the principle which regulates the acquisition of rights of prescription—*tantum præscriptum quantum possessum.* In the leading case of *Lord Blantyre* v. *Dunn*, January 28, 1848, 10 D. 509, where the pursuer claimed right to the water conveyed into a stream by an artificial cut from another stream, the basis of judgment in favour of the pursuer was the immemorial possession by him of a mill below the outfall of the artificial cut, which thus got the benefit of the united streams, and not the mere fact that the artificial cut had existed for time immemorial. The point was even more distinctly brought out in *Mackenzie* v. *Woddrop*, January 24, 1854, 16 D. 381, which was also a case of an artificial cut from one stream to another. The pursuer, who was a riparian proprietor on the second stream below the junction of the artificial cut, claimed right to the water of the stream as augmented by the water conveyed by the cut. In his record the pursuer stated generally that for time immemorial the united water had been used by him and his predecessors for all purposes connected with their property. The Court appointed the pursuer to put in a minute condescending on the specific purposes to which he had applied the water. This having been done, the Court approved of issues. The issue which was adjusted for trying the pursuer's right to the use of the water conveyed by the cut was—'Whether for forty years and upwards, or for time immemorial, the water of the Medwyn, to the extent of one-half or thereby, has been conducted by means of a dam and separate channel upon the lands of the defender into the Garvald Burn, and whether for the foresaid period the Garvald Burn, so increased by water from the Medwyn, has flowed through or along the lands belonging to the pursuer, and having been used by him and his predecessors and their tenants in the said lands for all ordinary purposes.' These two cases related to artificial channels above ground, but if there is any difference between the artificial stream above ground and an artificial stream below ground, it is not a difference in favour of the pursuer.

"In short, the Sheriff-Substitute thinks that the time during which the pursuer's dywork has existed being much within the prescriptive period, and there being no proof of any prior possession, in the proper sense, by the pursuer and his authors, he has not established his right to the use of the water in question, and therefore he has no right of action against the defenders. . . . The defenders have got Messrs Herd's permission to take that water, and although the Messrs Herd are not formally parties to this action, the question which is practically involved is whether the pursuer has a title to complain of the Messrs Herd disposing of the water to the defenders. If the Sheriff-Substitute is right in the view which he has taken, the pursuer can only maintain this right on the ground that a servitude has been constituted in favour of his property. . . . The Sheriff-Substitute need scarcely say that he expresses no opinion as to the absolute legality of the defenders' operations. There may be persons who have a right to challenge them. All that he decides is that the pursuer has not established his right to challenge them."

The Sheriff-Principal (CRICHTON) adhered to the interlocutor of the Sheriff-Substitute so far as regarded the findings in fact, recalled the said interlocutor so far as regarded the findings in law, and in lieu thereof found that in the circumstances, the pursuer, not having instructed any right to the use of the water in question, had no right of action in respect of its diversion; therefore dismissed the petition.

He appended the following note: — "The parties were agreed that the facts upon which the question between them depends are fully and accurately set forth in the interlocutor of the Sheriff-Substitute. The pursuer's property is situated on the east bank of the Denburn, and he is entitled to the use of the water of that burn as it flows past his property. This burn, however, is a little way above the pursuer's property augmented by the water which is discharged from an artificial mine or level constructed more than forty years ago, and which now drains the mineral workings on the estates of Dunnikier and Raith. The greater part of this water is pumped up by the mineral tenants from workings at a lower level. In 1874 and 1875 the defenders enlarged a previously existing hole in the said mine or level, and they have since withdrawn from the mine for the purposes of their works a large quantity of the water flowing through it. They do not return any part of the water so withdrawn to the Denburn. To this the pursuer objects; and he maintains that he has a right to all the water which flows into the Denburn before it passes his property, and that whether the water comes from the natural tributaries of the burn or from artificial cuts into it, and which have existed

for more than forty years. It was conceded on the part of the defenders that if the water in the mine had come from a natural tributary of the Denburn they would have had no right to take the water into their works in the manner they had done. But they contended that as the water flows through an artificial channel, and is pumped from the workings in Dunnikier and Raith coalfields, the pursuer never could by any length of possession acquire right to it. It appears to the Sheriff, upon consideration of cases both in Scotland and England where questions of this kind have arisen, that there has been a tendency to apply the law applicable to natural streams to artificial water-courses whether these be on the surface or underground. The leading cases in Scotland on this point are—*Lord Blantyre* v. *Dunn*, 28th January 1848, 10 D. 509; and *Mackenzie* v. *Woddrop*, 24th January 1854, 16 D. 381. But it will be observed that in these cases the artificial water-courses were of a permanent nature, and through which there was a perpetual flow of water. In the case of *Blantyre* v. *Dunn*, Lord Medwyn said—'Of course I laid stress on the circumstance that there is a perpetual flow of water through this artificial channel. This is essential.' Had the mine or water-course from which the defenders have taken the water been of such a permanent character as the water-course is in the above cases, then the pursuer might have been entitled to interdict against them; but in the opinion of the Sheriff it is not so. No doubt water has flowed through this water-course for a great number of years, but the flow may not be perpetual. It appears from the proof that on one occasion, in consequence of the pumping-engine of the Dunnikier coalfield getting out of order, the flow of water in the mine became very small. It is possible that the levels of the coal workings might be so altered as to cause the water to flow in a different direction. If at any time it should be more convenient for the mineral tenants of the Dunnikier and Raith coalfields to send the water in a different direction from that in which it at present flows, it is plain the pursuer could have no claim against them. The Sheriff has come to be of opinion that the water-course in question, being an artificial one of a temporary character, through which there may not be a perpetual flow of water, the pursuer has no right of action for its diversion. The case in England which in its circumstances is nearest to the present is that of *Wood* v. *Wand*, 26th April 1849, 3 Ex. 748. The pursuer further maintained that by possession for the prescriptive period he had acquired a right in the water flowing through the mine. The Sheriff-Substitute has disposed of the case on the assumption that the pursuer could do so, and he has expressed an opinion that the pursuer has failed to prove that the water has been used by him and his authors for all ordinary purposes for forty years and upwards. In the view that the Sheriff takes of this case it is unnecessary to consider this question. But he may say that the proof adduced by the pursuer fails to establish that he has possessed the water flowing through the mine for the prescriptive period."

The pursuer appealed, and argued—He made no claim as against the originator of the water supply to continue it, but he had title to complain of the defenders' operations, which tended to deprive him of his right to all the water which flows into the Denburn before it passes his property. The question raised by him here was expressly reserved in the case of *Irving* v. *Leadhills Mining Company*, March 11, 1856, 18 D. 833, viz., whether, supposing he has used the water for valuable purposes for the prescriptive period, the mineral tenants are entitled, for purposes unconnected with the workings of the minerals, to dispose of the water otherwise?—Digest of the English Law of Easements of Mines, p. 14; Gale on Easements, 276; Lord Jeffrey's opinion in the case of *Munro* v. *Ross*, July 7, 1846, 18 D. 1029.

The defenders replied—The complainer had no title to sue. This was a purely artificial stream, under the complete control of the proprietors of the Dunnikier minerals, who could withhold or continue the supply as they pleased. The defenders had acquired their right to perform the operations complained of with the leave and license of these proprietors—*Blair* v. *Hunter, Finlay, & Co.*, Nov. 29, 1870, 9 Macph. 204; Lord Justice-Clerk Hope's opinion in *Irving* v. *Leadhills Mining Company*, March 11, 1856, 18 D. 833. The complainer could not acquire right to the supply by prescription without showing that the circumstances under which the cut was made showed that it was intended to be of a permanent character—*Laird* v. *Martyn*, June 3, 1865, Com. Bench, new series, 19, 732; *Wood* v. *Wand and Others*, April 20, 1849, Exch. Reports, vol. iii. 748.

At advising—

Lord Justice-Clerk—I must say that I regret that this case has not been settled in an amicable manner, all the more that it appears from the correspondence which has passed between the parties that there has been no indisposition on the part of the respondents to do what they could to obviate the inconvenience suffered by the petitioner. But since the matter has been made the subject of juridical contention, I must say that I am very clearly of opinion that there is no just ground of complaint revealed here, and that the Sheriff's judgment is well founded. The position of the parties, though to be ascertained with some difficulty, is this—The respondents are proprietors of certain works situated in the neighbourhood of the stream in question, and the petitioner is also a lower proprietor on the same artificial or natural flow of water, and there is another proprietor of the name of Hutchison immediately above him.

It appears that the proprietor of the minerals of Dunnikier and the mineral tenant drain off the water accumulated in their coal-workings by means of a mine or level which comes to the surface at a place above the works of the petitioner. This water flows in the mine or level till it reaches the surface in the almost dry channel of the Denburn. Now, it seems that the respondents' works have for a considerable period got water from this *opus manufactum* by diverting the water from the Dunnikier mine by means of a cut or level to their works. This was an old thing; apparently it had existed for a century; but recently the respondents have commenced to get a larger supply of water by enlarging a previously existing hole in the mine or level. This was challenged at first, but the operation

apparently was done on the property of the coal owner, and it was done under an agreement for a payment of £10 a-year, and so far as the coal owner is concerned the respondents are within their right in taking the water. But then the result has been that exactly as the water has been drawn off, the water which would otherwise have flowed to the petitioner's ground has been diminished in amount. The petitioner has been in the habit of being supplied at his dyeworks with the water from the mine, and no doubt the recent operations of the respondents have diminished the supply in so far as it came to the Denburn through the artificial mine. The question here then is, whether the petitioner can vindicate his right to the water? I am clearly of opinion that he cannot. This mine is an artificial conduit by which the water which comes to the surface is carried off to the sea. The mine is wholly the property of the mineral owners, and it is the tenants' duty to maintain it. None of the lower proprietors have any legal interest, except in so far as they may be damaged by the water flowing on to their ground; of course, if the burn were rendered unwholesome by the water from the mine it might be a different matter. It follows, then, that the mineral owner may continue to send the water down to the sea so long as he likes, and as long as he does no injury to others such as I have indicated. The stream is not a natural stream at all—it is artificial—and the inferior heritors have not the same rights as regards it as they have in a natural stream. The principle was well laid down by Lord Justice-Clerk Hope in the case of *Irvine* v. *Leadhills Mining Company*, and we have applied it in other cases, and I never imagined that it was doubted.

It would be different if what the respondents did had been done without the assent of the owners of the mine. But I am of opinion that it was actually done with the assent of the only persons interested, and therefore that it is not necessary to go into the legal questions raised. The granting of leave to take this water was an act *meræ voluntatis* of the mineral tenants—the owners of it.

Lord Young—I am of the same opinion, and think the case a clear one. The water about which the dispute has arisen is running in an artificial conduit, and it is caused by the operations of the coalmasters at Dunnikier and Raith. That trade cannot be carried on without pumping out the water from the mines, and it is the business of the tenants of the mines to do this, and to get rid of the water so raised. In this case they have made an artificial outlet for the purpose through other persons' property, and the respondents are some of the persons through whose property the aqueduct is carried. It seems that in 1863 the petitioner, whose dyeworks required a supply of water, finding the water in this aqueduct near him, took water from the burn into which the aqueduct discharged, and so long as no one was hurt by these operations we find no complaint. But then the respondents are also taking a supply higher up where the aqueduct passes through their property, and that with the consent (whether necessary or not there is no need to ask, for in point of fact it was given) of the owners of the minerals. Then the pursuer says—"I cannot get as much water as formerly, and you are therefore interfering with my legal right." Now, I am clearly of opinion that there is no infringement of his right at all; and on these grounds, and assenting otherwise to the view expressed by your Lordship, I am of opinion that the Sheriff's judgment should be affirmed.

I have only further to say that I sympathise with the Sheriff-Principal when he says at the end of his note that in his opinion the pursuer would have established no legal right to the water even if he could have shown that he had drawn the water for a period of forty years. The Sheriff-Substitute has disposed of the case on the assumption that he could do so. I mean that I assent to the distinction, and wish it to be clear that we do not decide whether use for the prescriptive period would have created a legal right entitling the pursuer to complain.

Lord Craighill—I am of the same opinion. The water in dispute is the result of winning the minerals in the estate of Dunnikier and Raith. If the operations complained of had been carried out by the mineral owners or tenants, no complaint could have been made. That being so, the only circumstances under which the petitioner could complain would be that the respondents had executed them at their own hands, and without leave or title. But what they have done has been done with the leave and consent of the mineral tenants, and so all ground of complaint disappears.

Lord Rutherfurd Clark—I am of the same opinion. If the consent of the mineral owners had not been given to the respondents' operations, the case would, I think, be a difficult one to decide, but the case is relieved of all difficulty when that consent is given.

The Lords pronounced this interlocutor:—

> "Find that for more than forty years the proprietors of the mineral field of Dunnikier, and their tenants therein, have been in use to convey the water accumulated in the mineral workings to the sea by a mine or level passing in part through the lands of adjoining proprietors: Find that the respondents (defenders) have for more than forty years taken off with consent of the tenant of the mineral field a supply of water for premises belonging to them by an orifice in this level at a point under the channel of the Denburn: Find that at a point below this the water in the said level comes to the surface and finds its way into the Denburn, and that the appellant (pursuer) has been in use since 1863 to use the water thus discharged: Find that the respondents have lately enlarged the opening into the level with the consent of the mineral tenant, and withdrawn a larger quantity of water, which is thus diverted from the Denburn: Find that these operations are lawful, and that the appellant has no legal right or interest to prevent them: Therefore dismiss the appeal, affirm the judgment of the Sheriff appealed against, and decern."

Counsel for Appellant—Guthrie Smith—Nevay. Agent—Robert Broatch, Solicitor.

Counsel for Respondent—Scott—V. Campbell. Agents—A. J. & J. Dickson, W.S.