

Tuesday, November 30.

## FIRST DIVISION.

[Lord M'Laren, Ordinary.]

CALEDONIAN RAILWAY COMPANY v.  
CHISHOLM.

(Ante, vol. xxiii. p. 539, 13 R. 773.)

*Process—Amendment of Record—Court of Session  
Act 1868 (31 and 32 Vict. cap. 100), sec. 29.*

This was an action by the Caledonian Railway Company against John Chisholm for payment of £8105, 17s. as due to them for the carriage of sacks during a period of years for which there had been a contract between the parties. The various charges for carriage which made up the sum sued for were contained in an account produced with the summons. The Court having, as previously reported, repelled the plea that the triennial prescription applied, and allowed proof, the pursuers lodged a new account, and craved to have it substituted for that produced with the summons. The defender craved to have the new account withdrawn from the process. The change proposed involved the striking out and putting in of items, and a consequent alteration in the amount charged for freight. The amount claimed in the new account was restricted to the amount sued for under the conclusions of the action.

The Act 31 and 32 Vict. cap. 100, sec. 29, provides that "the Court or the Lord Ordinary may at any time amend any error or defect in the record or issues in any action or proceeding in the Court of Session, upon such terms as to expenses and otherwise as to the Court or Lord Ordinary shall seem proper; and all such amendments as may be necessary for the purpose of determining in the existing action or proceeding the real question in controversy between the parties shall be so made; provided always, that it shall not be competent by amendment of the record or issues under this Act, to subject to the adjudication of the Court any larger sum or any other fund or property than such as are specified in the summons or other original pleading, unless all the parties interested shall consent to such amendment."

The Lord Ordinary refused the pursuers' motion, and found it unnecessary to dispose of the defender's, and granted leave to reclaim. The pursuers having reclaimed, the Court recalled the interlocutor and allowed the amendment, reserving all questions of expenses.

Counsel for Pursuers—Balfour, Q. C.—Johnstone—Guthrie. Agents—Hope, Mann, & Kirk, W. S.

Counsel for Defender—Sol.-Gen. Robertson, Q. C.—Pearson—Dickson. Agents—J. & A. Peddie & Ivory, W. S.

Tuesday, November 30.

## SECOND DIVISION.

[Lord M'Laren, Ordinary.]

KEILLER v. MAGISTRATES OF DUNDEE.  
SCOTT v. MAGISTRATES OF DUNDEE.*Burgh—Foreshore—Title of Magistrates to Challenge Claim to Property in Foreshore.*

The proprietor of lands within a burgh brought a declarator of property of the foreshore *ex adverso* of these lands against the magistrates of the burgh (and also against the Crown, who did not defend), and produced as his title a disposition to the foreshore dated in 1884. This disposition was deduced from a barony title which did not include the foreshore *per expressum*, and on which possession of the foreshore had not followed. *Held* (1) that as the inhabitants of the burgh had been in use from time immemorial to resort to the foreshore in question for the purposes of recreation, the magistrates had a title to challenge the defenders' alleged right of property; and (2) that on the titles produced he had failed to instruct such a right. Defenders therefore *assolvièd*.

*Burgh—Foreshore—Possession.*

A proprietor of land within the extended area of a royal burgh, who held a conveyance from the Crown dated in 1858 "of all right, title, and interest of Her Majesty, her heirs and successors," in a portion of the foreshore *ex adverso* of the property, lying between high-water mark and a line of railway formed along the foreshore, *held*, in a declarator at his instance against the magistrates, (1) to have a right of property in this piece of foreshore, but (2) to have no title to exclude the inhabitants of the burgh from resorting thither for purposes of recreation, they having so used it from time immemorial.

*Act 1 and 2 Will. IV. c. xvi—Act to Extend Royalty of Dundee.*

*Held* that this statute did not transfer the property of the foreshore of the extended royalty of Dundee from the Crown to the community, but that it gave the magistrates a title to administer it and use it for public purposes, subject to the limitations attaching to the right of the Crown itself.

In 1846-47 the Dundee, Perth, and Aberdeen Railway Junction Company, under parliamentary powers, constructed a line of railway between Dundee and Perth along the north bank of the river Tay. Where the line left Dundee it was carried on an embankment which passed to the south of the open piece of ground called Magdalen Green, and thereafter below high-water mark along the foreshore of the river for a considerable distance to the west. The effect of this was to cut off from the estuary of the Tay the portion of the foreshore lying to the north of the line, except so far as the tidal waters of the river obtained access to it, which happened at first by means of culverts or openings in the embankment (which were filled up at the date of this action), and afterwards solely by percolation through the embankment. The