very strict reading of the record to hold the pursuers tied down to the view that M'Kinlay was an acceptor. The alternative of "joint obligant" fairly covers the case of his having been an endorser, his collateral obligation having been for the whole sum; and really the point is not so much one of fact as of the legal result of facts, about which both parties are agreed. But by the form of action, in the conclusions of which the fact of endorsement is the medium of liability, I think the pursuers are entitled to maintain any legal ground on which the endorsement infers the obligation of payment of the bill. The ground of action is the signature on the bill, and the advance made on the faith of it, and I think the pursuers are entitled to succeed if the legal effect of that signature was to create an obligation for payment of the bill. If this be doubtful, the pursuers, under the 29th section of the Court of Session Act 1868, which has proved so beneficial in practice, would in my opinion be entitled to amend the record to the effect of stating, as an alternative view of the legal effect of the endorsement, that Mr M'Kinlay merely gave a collateral obligation as endorser; and in any view, if the case were to be decided, after all the procedure and proof that has taken place, on the technical ground that the only liability founded on is that of an acceptor, it would be only just and proper to dismiss the action on that ground, reserving the pursuers' claim against the defender founded on the obligation as being that of an endorser—a result which would indeed be very unfortunate, and without a parallel in recent years, seeing the case is now ripe for decision, and is to be decided on the merits of the question whether M'Kinlay undertook liability for payment of the bill.

On these grounds I am of opinion with Lord Gifford that the first finding in the Lord Ordinary's interlocutor ought to be adhered to.

The Court recalled the interlocutor of the Lord Ordinary, finding that the pursuers were not entitled to recover the amount of the bill in question.

Counsel for Pursuers (Respondents)—Balfour-Pearson—C. A. Paterson. Agents—Ronald & Ritchie, S.S.C.

Counsel for Defender (Reclaimer)—Scott—J. P. B. Robertson. Agents—Morton, Neilson, & Smart, W.S.

HOUSE OF LORDS.

Thursday, June 19.

LORD BLANTYRE *v.* THE LORD ADVOCATE AND THE CLYDE TRUSTEES.

(Before Lord Hatherley, Lord Blackburn, and Lord Gordon.)

(In the Court of Session December 19, 1877, *ante*, vol. xv. p. 382.)

Property—Right to Foreshore of a Public Navigable River—Where Barony Title followed by Possession—Acts constituting Possession.

A proprietor who held upon a barony title certain lands which were bounded by the river Clyde, which was a tidal navigable river, brought an action of declarator against the Crown and the Clyde Trustees to have it found that the shores and banks of the river *ex adverso* of his lands belonged to him, subject to the rights of the Crown as trustee for public uses, and to the rights conferred by Parliament upon the Clyde Trustees. The title contained no express grant of the shore, and no such specific and definite boundary as was sufficient to instruct that it was intended to be conveyed. The proprietor proved acts of possession for forty years by pasturing cattle, by cutting reeds for thatching, by taking sea-weed and drift-ware, by carrying away sand and stone for building, &c. *Held* (*aff.* judgment of Court of Session) that the pursuer's title, taken in connection with the evidence of the possession had of the foreshore, was sufficient to entitle him to decree as asked.

Observations per Lord Blackburn upon the legal estimate to be put upon acts of possession in a case of that kind, and upon the circumstances which will give these acts weight in considering the evidence.

This was an appeal at the instance of the Crown against a decision of the First Division of the Court of Session in an action by Lord Blantyre and another against them, in which the Clyde Trustees were afterwards sisted as co-defenders along with them. The case is shortly reported, 19th Dec. 1877, *ante*, vol. xv. p. 382, and the circumstances of it are sufficiently detailed in the opinion of Lord Blackburn (*infra*).

At delivering judgment—

Lord Blackburn—My Lords, the respondents sought, against the Lord Advocate as representing the Crown, to have it "found and declared, by decree of the Lords of our Council and Session, that the ground forming the shores and banks of the river Clyde, between high water-mark and low water-mark, including the space between high water-mark and the longitudinal walls or dykes which have been erected along or near to certain parts of the deepened channel of the said river, *ex adverso* of the estates of Erskine, Bishopton, and Northbar, in the county of Renfrew, and *ex adverso* of Kilpatrick and Dalnottar, and of Shorepark and Glenarbuck, ni the county of Dumbarton, belonging to the pursuers, belongs in property to the pursuers, and is part and pertinent of the adjoining lands, but subject always to any rights of navigation or other rights which the public may have over the same, and subject also to any rights conferred upon the Trustees of the Clyde Navigation by their Acts of Parliament." The River Clyde Trustees were added as defenders.

The pleas-in-law for the pursuers, the respondents, were two—(1) The shores and banks of the river Clyde *ex adverso* of the lands and baronies libelled, being the property of the pursuers by virtue of their titles, subject to the right of the Crown as trustee for public uses, the pursuers are entitled to decree in terms of the conclusion of the summons. (2) *Separatim*—The shores and banks libelled having been for

time immemorial, or at least for forty years, possessed as their property by the pursuers and their predecessors, they are entitled to decree as concluded for.

The Lord Advocate and the Clyde Trustees by their pleas-in-law traversed both of the pleas-in-law of the pursuers.

A great deal of evidence was led for the pursuers, the respondents, and some on behalf of the Clyde Trustees. None was led by the Lord Advocate.

The interlocutor of the Lord Ordinary (Lord Curriehill), dated 18th July 1876, is appealed from. It is in the following words:—"*Edinburgh, 18th July* 1876.—The Lord Ordinary having hear d the counsel for the parties, and considered the closed record, proof, and whole process, Finds that the pursuers, in virtue of their titles to the lands libelled, and of the possession by the pursuers, and their predecessors and authors, under and in virtue of said titles, for upwards of forty years before the commencement of the action, or from time immemorial, are proprietors of the foreshores of the river Clyde *ex adverso* of said lands, but subject always to any rights of navigation or other rights which the public may have over the same, and subject also to any rights conferred upon the Trustees of the Clyde Navigation by their Acts of Parliament: Therefore finds, decerns, and declares in terms of the conclusions of the summons: Finds the defenders, and the Trustees of the Clyde Navigation, who have compeared as defenders, liable in expenses to the pursuers; appoints an account thereof to be lodged, and remits the same to the Auditor to tax and to report."

Two interlocutors of the First Division of the Court of Session, dated respectively 19th December 1877 and 21st February 1878, are also appealed from. They are in the following words:—"*Edinburgh, 19th December* 1877.—The Lords having resumed consideration of the cause, with the additional proof taken by Lord Mure, and heard counsel thereon, and on the reclaiming note for the Trustees of the Clyde Navigation and another against Lord Curriehill's interlocutor dated 18th July 1876, Adhere to the said interlocutor, and refuse the reclaiming note: Find the defender and the Trustees of the Clyde Navigation liable in additional expenses, excepting therefrom the expenses occasioned by the allowance of additional proof; allows an account of said expenses to be given in, and remits the same when lodged to the Auditor to tax and report." "*Edinburgh, 21st February* 1878.—The Lords approve of the Auditor's report on the account of expenses incurred by the pursuers, and decern against the defender the Lord Advocate and the Trustees of the Clyde Navigation for payment to the pursuers of the sum of £526, 12s. 9d. of taxed expenses." The Lord Ordinary in the note explanatory of the grounds of his judgment entered very fully into the whole law on the subject, and discussed at length and with great care the effect of the evidence led before him.

It was contended by the appellants before the First Division that the small property of Glenarbuck being held by a different title from the barony of Erskine, the possession for forty years *ex adverso* of it was not proved by that which went to prove possession *ex adverso* of the barony; and that on taking the evidence before the Lord Ordinary the evidence bearing on the one had not been sufficiently discriminated from the evidence bearing on the other. The pursuers were therefore allowed to lead additional evidence of the possession of the foreshore *ex adverso* of the lands of Glenarbuck by themselves and their predecessors, and the defenders were allowed a conjunct probation. Additional evidence was led before Lord Mure both by the pursuers and by the Clyde Trustees; and after this had been heard the second interlocutor appealed against was pronounced.

Lord Mure delivered an elaborate opinion, in which Lord Deas, Lord Shand, and the Lord President briefly expressed their concurrence. Lord Mure said—"In dealing with such cases there are, as it appears to me, certain propositions in law which may now be assumed to be settled. The first is that property in the foreshore is capable of being transferred by the Crown to a private proprietor. Secondly, that such property can only be alienated by the Crown subject to and under reservation of any rights of navigation, or other rights, which the Crown, as representing the public, may have over it. Thirdly, that a Crown title, and more especially a barony title, to property along the seashore or a tidal navigable river, when followed by possession of the foreshore, is sufficient to constitute a valid right of property in the foreshore, although the title does not contain any express grant of the shore, or any such specific and definite boundary as is by itself sufficient to instruct that the shore was intended to be conveyed. As to these three propositions I do not understand that there is here any dispute between the parties. But there is another important question relative to such rights which has been raised, and as to which parties are directly at issue, viz., whether a barony title to property which does not contain an express grant of foreshore, or any such specific boundary as can be held to include the foreshore, is of itself and without any proof of possession sufficient to confer that right. The Lord Ordinary has stated in the note to his interlocutor that, in the view he takes of the present case, it is unnecessary to pronounce any formal judgment on this question as to the effect of a barony title; but as it appears that the parties were desirous that an opinion should be expressed upon the point, his Lordship has indicated his opinion that the question is practically settled, in so far as this Court is concerned, by the decision in the case of *Agnew* v. *The Lord Advocate*, 20th January 1873, 11 Macph. 309, and in that judgment I understand his Lordship to concur. I agree with the Lord Ordinary in thinking that the decision of this question is not necessary for the disposal of the present case, but as it has been argued more especially with reference to that portion of the pursuer's property called Glenarbuck, which was acquired by him in the year 1845, it may be right that I should state that as at present advised I should be disposed to hold that the judgment in the case of *Agnew* proceeds upon a sound view of the law applicable to that important question. I do not think it necessary to state at any length

the reasons which lead me to come to that conclusion. There have, no doubt, been contradictory opinions upon that question by eminent Judges; but I think that the result which the Second Division came to in the case of *Agnew*, upon an examination of all the authorities, was very shortly and distinctly expressed by Lord Benholme in his opinion, when he said that 'where an estate is on the seashore, held by titles that do not by express grants or specific boundary extend the right of the proprietor beyond the high water-mark, there is no presumption that the foreshore is a pertinent of the land.' The question therefore which we have now to dispose of is, whether the pursuer's title, taken in connection with the proof of possession which has been had of the foreshore, is sufficient to entitle him to decree in terms of the conclusions of the summons?"

My Lords, the Lord Advocate at your Lordships' bar pointed out that the decision against the Crown proceeded on the second plea-in-law, and that he had no case on appeal unless he could get rid of that contention. The respondents have in their case entered into an elaborate argument to show that their first plea-in-law was good. That the Lord Advocate denied, but he proposed to reserve what he had to say on that point till the reply, if it became necessary to decide that question. This course was approved of. The Lord Advocate further admitted that he was not prepared to deny that the three propositions stated by Lord Mure in the passage just read were accurate statements of the law of Scotland, and consequently that the question was, as stated by Lord Mure, whether the pursuers' title, taken in connection with the proof of possession which has been had of the foreshore, is sufficient to entitle him to decree in the terms of the conclusions of the summons?

The Lord Advocate and Mr Martin were accordingly heard on this part of the case, and urged all, I believe, that could be urged on behalf of their clients. At the conclusion of their argument your Lordships adjourned the further hearing of the appeal in order that you might determine whether it was necessary to hear the counsel for the respondents.

Your Lordships have the elaborate and very able opinions of Lord Curriehill, before whom one part of the oral evidence was heard, and of Lord Mure, before whom the rest of the oral evidence was heard. Both of those learned persons agree in the result, and the other Lords of Session have agreed with them unanimously. My Lords, it is not a light thing to draw from the written notes of evidence a conclusion differing from that which was come to by those who heard the evidence. If I did so, it would be with doubt and diffidence, and I should not express such an opinion without much consideration, and what seemed to me to be strong reasons. But in this case, after having carefully listened to all that was said at your Lordships' bar, and after having for myself examined the evidence, I must say, speaking for myself alone, that not only should I have come to the same conclusion as the Lords below, but that I should have found difficulty in affirming a contrary finding if it had been come to by them. I think that if the burden of proof lay upon the respondents to prove possession of the foreshore for forty years, they have done so.

I do not propose to enter into a detailed examination of the evidence. That has been already very fully and, to my mind, very satisfactorily done by Lords Curriehill and Mure. But I may make a few general observations arising on what was argued at your Lordships' bar.

The principal question is, Whether, on the whole, it is proved that Lord Blantyre and those who preceded him in the barony of Erskine have been for the last forty years in possession of the foreshore lying between the high water-mark and the low water-mark of the Clyde, a tidal navigable river *ex adverso* of that barony. This is a tract of considerable extent—I think rather more than 700 acres.

Every act shown to have been done on any part of that tract by the barons or their agents —which was not lawful unless the barons were owners of that spot on which it was done—is evidence that they were in possession as owners of that spot on which it was done. No one such act is conclusive, and the weight of each act as evidence depends on the circumstances; one very important circumstance as to the weight being whether the act was such and so done that those who were interested in disputing the ownership would be aware of it. And all that tends to prove possession as owners of parts of the tract tends to prove ownership of the whole tract, provided there is such a common character of locality as would raise a reasonable inference that if the barons possessed one part as owners they possessed the whole, the weight depending on the nature of the tract, what kind of possession could be had of it, and what the kind of possession proved was? This is what is very clearly explained by Lord Wensleydale (then Baron Parke) in *Jones* v. *Williams*, 2 Meeson and Welsby, 331. And as the weight of evidence depends on rules of common sense, I apprehend that this is as much the law in a Scotch as in an English Court. And the weight of the aggregate of many such pieces of evidence taken together is very much greater than the sum of the weight of each such piece of evidence taken separately.

Now, in the present case there is a great volume of evidence of almost every kind of act of ownership. Some of them are, if they stood alone, not of great weight; some are very weighty indeed. That which makes most impression on my mind is, that wherever throughout this whole tract any part of the foreshore has been elevated by the deposit of rubbish or soil so as to be raised above the level of the tide and turned into dry land, the land from which the water has been excluded has been taken possession of by the barons of Erskine. I do not attach much weight to acts of this sort done recently—one may say almost *post litem motam*—but I attach very much weight to what has been done both before the forty years and during the earlier part of the forty years, during which time everybody, including the Clyde Trustees, seems to have assumed that the foreshore was the property of the barons of Erskine. It was argued that as the barons had an unquestionable right as riparian proprietors to have access to the water at high tide, even though the foreshore was still the property of the Crown, the Clyde Trustees when de-

positing mud and shingle on the foreshore so as to shut them off from such access, did what, if not authorised by the statutes, would be an injury if authorised—a matter for which they were entitled to compensation. That is true, but there was nothing to justify the Clyde Trustees or anyone else in making compensation to the barons for this injury by giving them the foreshore if it was the property of the Crown. If it was the property of the barons, they were entitled to it, and it is perfectly intelligible that they did not ask for compensation from the Clyde Trustees for doing that to their land which was really an improvement to it.

I may say that I think any evidence tending to show that the Clyde Trustees acted as owners of this tract, or of any part of it, would in my mind have been relevant, as showing that they were, and consequently that the barons of Erskine were not, in possession; but so far as I can perceive, every act done by the Clyde Trustees is attributable to their statutable powers. The same remarks apply to the less important question, whether the evidence proves that the owners of Glenarbuck have been for forty years in possession as owners of the foreshore *ex adverso* of that smaller property?

It is not necessary to form any opinion on the question as to the first plea-in-law, and as the counsel for the respondents have not been heard on that question, it would be improper to express any opinion even if one was formed. The authority of the case of *Agnew* v. *Lord Advocate* is not either increased or shaken by what is now decided if your Lordships take the view of the evidence which I do.

I should therefore propose that your Lordships do not call upon the respondent, and affirm the interlocutors appealed against, and dismiss the appeal with costs.

Lord Hatherley—My Lords, I adhere to the view taken by my noble and learned friend who has addressed the House as to the disposal of this case. The case has been argued with great ability and at full length before your Lordships' House, but when looked into it really reduces itself simply and entirely to a question of fact.

Points of law are glanced at in the pleadings and also in the judgments of the learned Lords of Session who determined this case in the first instance, but they are glanced at to be summarily, and as I think justly, disposed of by this remark, that supposing that that which might have been at one time a very much contested point had arisen in this case, it would have occasioned no difficulty—the point, namely, as to whether or not one who has had a grant of a barony not defining the exact boundary, and especially the exact river or sea boundary, with regard to the foreshore which forms the fronting portion of the land which he has acquired by the title of the grant of the barony, is obliged, inasmuch as he cannot show by the charters themselves a definition of his property, to add to the grants contained in those charters a proof of possession of the foreshore in front of his own soil if he claims that foreshore. Whether or not *Agnew's* case be correctly decided (as to which I cannot say that I entertain much doubt), I apprehend that your Lordships will not in this case be obliged to consider that question, or to deliberate as to that point which was raised and decided in *Agnew's* case adversely to the owner, namely, that he cannot rest upon his paper title, if I may so call it, without proving possession of that foreshore which he claims, in cases where the definition of it is not strictly and clearly contained in the charter itself. In those cases it may be very right and proper that the proof should be required to satisfy the Court, and in order that that which is not *per se* clear should be made clear by the evidence of what has taken place under the title which has been acquired.

My Lords, if that be so, as the learned Judges in the Court below observed, and as my noble and learned friend who has just addressed your Lordships has observed, it does appear to me really to be made out abundantly clearly in this case that these acts of ownership have been exercised along that portion of the seashore to which the respondents on the present occasion have asserted their right. Lord Curriehill has gone into the question of title as it appears upon the documents at full length, and I shall not repeat his observations. No question has been raised with reference to the description of the property which is conveyed by the several charters. No doubt is raised that by virtue of several charters Lord Blantyre and those who preceded him acquired a title distinctly to a large space of territory extending a long way down the river Clyde, and on each side of that river, a considerable portion of that territory passing under the names of the barony of Erskine principally, and of the barony of Glenarbuck. The seashore now in question forms approaches to that land, the title to which has been so acquired by means of grants of those baronies.

My Lords, what has been done there? We have a description of that fully given by Lord Curriehill, in which he says—"The pursuers maintain that they have established by the proof that they and their predecessors have had possession of the foreshores on both sides of the river, along their whole property, of such a character and for such a length of time as to show that the undefined grant of barony really included the foreshores in question."

He sums the proof up in the following words—I have listened to the argument upon the evidence very carefully, and I have very carefully read the evidence, and it appears to me that Lord Curriehill is perfectly accurate in what he considers to be established by the proof in the cause. He says—"The proof clearly establishes that from time immemorial the pursuer and his predecessors have exercised upon the foreshores in question, on both sides of the river, nearly every conceivable right which an undoubted proprietor could have exercised. They have regularly, themselves or by their tenants, used for pasturing their cattle those portions of the foreshores which, though covered at high water, produce grass available for pasture." As to that several witnesses were called, namely, the tenants occupying the lands in a portion of the district, who described the pasturing of their cattle upon the places in question along various parts of the foreshore. Then Lord Curriehill says—"They have regularly cut the reeds which grew on the foreshore, and used the same for thatching and other purposes, and until the supply failed, owing to the pollution of the water, they regularly cut

the seaweed which grew upon the foreshores, and carried off that ware" (it has been called "sea-ware") as well as the drift-ware for the purposes of manuring their lands. They have also carried away large quantities of sand and stone from the foreshore, and used the same for building houses and walls, and forming roads upon the estate" (this part I confess struck me as very forcible evidence of an exercise of the right in question), "and, in particular, some thousands of cartloads of sand were taken for the construction of the new mansion-house of Erskine, the building of which was begun in 1824, and was not finished till 1835 or later, and for the formation of an approach to the new house. During the same period also the rubbish and debris from the foundation of the new mansion-house and from the ruins of the old were deposited in large quantities upon the foreshores of the policy grounds, and upon that great quantities of sand and soil dredged from the bed of the river have been, at the request or with the permission of the pursuer and his predecessors, deposited on the foreshores, whereby the surface has been elevated above the level of high water, and has long been used as an addition to the arable or grazing ground of the estate. Similar operations have from time to time been performed on other parts of the foreshore on both sides of the river, whereby a considerable extent of ground has been reclaimed." I need not read any further. What I have read is quite enough to show what in the opinion of Lord Curriehill was the result of the evidence.

Now, my Lords, the Court below have been unanimous in their view of this evidence, and in particular Lord Mure, whose name has already been mentioned, has taken the same view as Lord Curriehill, going into some detail, but not quite to the same extent as Lord Curriehill has done. And there is one observation which I shall presently make with reference to the Clyde Trustees which struck my mind as having some strength with regard to this evidence.

My Lords, the corporation of the Clyde Trustees are setting up rights under their Act of Parliament upon the foreshore which they say they have exercised and they say further that they have interfered with other persons exercising rights which they thought hostile to the rights exercised or exerciseable by them. The answer to that on the part of the respondents has been—True, it may be, that you have exercised rights upon the foreshore, and indeed upon part of our foreshore (if I may so express it), on behalf of the respondents, but you have done nothing which you were not authorised to do by your Act of Parliament. Your Act of Parliament may well have authorised those Acts, and indeed the nature of the Act itself, the object of which was to improve the navigation of the Clyde, almost required that you should be furnished with very considerable powers adversely to the proprietors of land, who either were heard when the Act was before Parliament, or if they were not so heard, thought that it was not necessary to interfere with the rights and powers which were being granted to the Clyde Trustees.

But Lord Curriehill goes on to say—I do not quote his words—I merely state the effect and purport of his reasoning—that as regards the Crown itself, the Crown would not make a grant, and ought not to make a grant, of land except subject to the rights vested in the Crown to protect the river as trustee for the public in maintaining the navigation. The rights granted by Parliament would only be granted in the same way, and if the Acts of the Clyde Trustees, and the clauses granting powers to those trustees be carefully scanned (they are elaborately set forth in Lord Curriehill's judgment) it will be seen that no right in the soil itself—no possessory right—is granted except for the purposes of the Act. We find that there are a considerable number of powers granted materially interfering with the rights of proprietors as regards their own property as far as the protection of the river goes, but they are confined entirely to that particular purpose. I do not find that it is alleged in any portion of the documents before your Lordships, nor do I find in the evidence anything that proves that Parliament interfered with or forbade the respondents from exercising the rights which they claim adversely to the Clyde Trustees—I mean adversely in this sense, as being the owners and proprietors of the land in question, and as being entitled to rights—not to co-equal rights; that would be absurd—but to rights with them in the property. It was made subject to such powers and authority as would be necessary for the general purpose of the Act, which general purpose was the improvement of the river Clyde, and so far as powers of interference were required for the purpose of improving the river, they were granted so far, and so far only, as Parliament allowed.

But, My Lords, there was another point which struck me, I confess, all through. These River Clyde Acts, and the rights and powers of the trustees, and the modes in which they have exercised them, are all very strongly corroborative of the view that Lord Blantyre has acted within his rights in those things which he has done, because this is not a mere ordinary case of a person exercising rights in a property which perhaps may not interest a great number of people around him so as to induce them to interfere with exercise of those rights. Part of the argument which has been addressed to us is, that hardly anything has been done by Lord Blantyre which might not have been done without disturbing the repose and comfort of his neighbours, or interfering with any other right which might call forth the interference of third parties. But, my Lords, here you have a standing body appointed by Act of Parliament, with certain powers to do certain things, some of which might have been done by the Crown, but besides that, having certain higher powers granted by Parliament with the sanction of the Crown. They having those powers conferred upon them are on the spot; they can notice all that is going on, and they can, if they will, step forward to prevent it. They are a body with means and powers of every kind which would have enabled them, if they had thought fit to interfere with this exercise of these acts of ownership, if I may so call them, on the part of Lord Blantyre and his predecessors. But we do not find any such step taken by the Clyde Trustees when that considerable interference with the foreshores was going forward for eleven years, when the respondent was removing large masses of sand—some thousands of cartloads it is said—from this foreshore itself. That, if anything, was a matter which ought to have

called forth, and would have called forth, the interference of the Clyde Trustees, who were always there, and were able to protect themselves and to assert the right, if they had it, to interfere with such acts of ownership. But, my Lords, we find that no such step was taken by them. Those acts of ownership appear to have gone on—Lord Blantyre or his predecessors taking the sea-ware, pasturing their cattle on the foreshore, and taking the sea sand and removing it—all this was done within the cognisance and the jurisdiction of those who had ample means of interfering if they had thought proper to interfere. Nothing, however, was done in the way of interference, and I say that that is very strongly corroborative of the view that those acts of ownership were done in due pursuance of the authority conferred by the grant and the possession thus acquired on the part of Lord Blantyre or his predecessors.

In all cases where there is such a grant as this, extending for several miles along a river, it is necessary for your Lordships to consider anxiously what the exact nature of the acts of ownership is. Now, it is not merely one corner or one field which is shown to have been used as pastures for the cattle for two or three days owing to some accidental occurrence in connection with their going to a fair, or the like; such casual exercises of the right are not the matter here in question. There seems to have been a regular exercise on the part of Lord Blantyre of the right of pasturing cattle in the manner described in the evidence, just like any other proprietor on his own field; and this was a valuable right. So with the right of taking sea-ware. It appears from the evidence that owing to some alterations which were made in the river Clyde some years ago the stones became nearly bare and the sea-ware ceased to be collected, but, as I understand the evidence, so long as there was any ware worth collecting, it was collected by the tenants of the respondent. In short, as Lord Curriehill says in the judgment which has already been referred to so often, all the rights that possibly could be exercised were exercised by the respondents, either from time immemorial or for more than 40 years, and thereby they fulfilled all the requisites of the *Agnew* case, should that case ultimately he held—and at present I see no reason why it should not be held—to be sound law. The respondents therefore escape from the stringency of that case by complying with the conditions which it imposes, namely, by showing that Lord Blantyre had held possession of, as it appears to me, sufficiently large portions of the shore immediately in front of his lands to justify your Lordships in coming to the conclusion that he is entitled to what he claims. It appears not to have been a partial exercise at one particular spot or at one particular time, but a general exercise, as often as he or his tenants thought fit, of the right to do what they conceived themselves justified in doing by virtue of the title acquired by him.

I confess, my Lords, it appears to me that these acts of ownership justify your Lordships in coming to the conclusion to which the Court below has come. I for one should be very loath and very slow to differ from the learned judges who had an opportunity of hearing and examining the evidence, and whose decision if we interfered at all in this case we should have to reverse, since the case appears to me to depend upon the facts, by reason of our taking a different view of the facts from that which has been taken by those learned Judges, and taken unanimously, in the Court below. Apart, however, from that consideration, I have come to the same conclusion as to the facts with the most perfect acquiescence in the views which they have presented, and I therefore agree in the motion which has been proposed by my noble and learned friend.

LORD GORDON concurred.

Interlocutors appealed from affirmed, and appeal dismissed with costs.

Counsel for the Crown (Appellant)—Lord Advocate (Watson)—Martin, Q.C. Agents—Walter Martin, and W. A. Loch.

Counsel for the (Respondents)—Herschel Q.C.—Kinnear. Agents—Grahames, Wardlaw, & Currey.

Friday, June 20.

CREE (LIQUIDATOR OF THE BONNINGTON SUGAR REFINING COMPANY, LIMITED) *v.* SOMERVAIL AND OTHERS (THOMSON'S TRUSTEES).

(Before the Lord Chancellor (Cairns), Lord Hatherley, Lord O'Hagan, Lord Blackburn, and Lord Gordon).

(In Court of Session Oct. 25, 1878, *ante*, p. 33.)

Public Company—Winding-up—List of Contributories—Purchase by Directors as Trustees on behalf of Company—Trafficking in Shares.

The memorandum of association of a company limited under the Companies Act of 1862 provided that no transfer of any shares either upon a sale or in consequence of the bankruptcy of any shareholder should be valid or effectual without the consent of a majority of the other shareholders expressed in writing, but that if the other shareholders declined to consent to any such transfer they should be bound to take the shares at the price offered in a case of sale, or at the market price in other cases.

Certain of the directors of the company made a direct purchase of shares from the executors of a deceased partner, and paid for them out of the company funds. A transfer was prepared, and the directors' names were subsequently entered in the register of shareholders with a notice of trust. In the winding-up of the company, which occurred upwards of a year afterwards, *held* that, apart from the question of the validity of the transaction, which was a matter for the company or those representing it, and following the decision in *Oakes* v. *Turquand*, August 15, 1867, L.R., 2 H.L. 325, and *Muir's* case, April 7, 1879, *ante*, p. 483, the directors' names fall to be placed upon the list of contributories in the interests of the creditors, just like any other parties who professed to hold upon trust.

Opinions (in disagreement with the judgment of the Court of Session) that the pur-