view of the Court. In these cases a reservation was carefully made of all the rights of the fishermen competent to them under that Act, and when the case was finally disposed of the following interlocutor was pronounced (*reads from report*). I apprehend that what we require to do here is just to insert that very careful reservation that these parties may be able to vindicate their rights in common with the other fishermen of Scotland. I particularly recommend the parties to carefully consider the judgments of the Court in these two reports. I concur in the views expressed there by Lord Justice-Clerk Inglis.

LORD NEAVES—I concur in the opinion. I think this interdict is partly right and partly wrong—partly right, in so far as to the claim for removing, because the party had no right otherwise or under the Statute to have a residence there; partly wrong, in going so far as regards future acts of interdict. To interdict a party from "returning to or squatting on, or intruding, &c," is certainly a very remarkable thing. It should be remembered, in regard to interdicts that they require to be prepared with great accuracy and precision, because breach of interdict infers punishment for contempt of Court. An interdict should both be carefully sought and carefully weighed by the Judge who grants it. This is an interdict that no judge should ever have granted in the circumstances of this case. I don't know what squatting is; it is not a *nomen juris* here whatever it may be in some of the colonies. An interdict in such broad terms would be no interdict at all, because the question of the right or the wrong of the intrusion would still remain behind. The interdict is much too wide. It looks as if it would cover even putting a foot on the ground for fishing. We must cut it down.

LORD BENHOLME absent.

Agent for Reclaimer—W. H. Muir, S.S.C.

Agents for Respondent—Adam, Kirk & Robertson, W.S.

Saturday, November 21.

FIRST DIVISION.

SPENCER *v.* CUMMING.

Sheriff—Debts Recovery Act, 1867—*Proof—Note of Evidence—Plea of Payment.* In cases under the Debts Recovery Act, where no note of evidence is taken under the 9th section, the parties cannot ask the Court to order the case to be reheard, and new or additional evidence taken under the 12th section.

Spencer brought an action, under the Debts Recovery Act 1867, 30 and 31 Vict., c. 96, against Cumming, for a sum of £28, as the balance of an account for goods furnished.

The defender pleaded—"1. The account libelled is erroneous. Most part of the goods therein charged for were neither ordered nor got by the defender; and the sum sued for is not due. 2. The defender frequently asked a correct account from the pursuer's traveller, as well as from the pursuer's house, but they failed to furnish it till this action was raised, and thus, in any view, no expenses can be claimed."

After a proof, neither party requesting a note of evidence to be taken, the Sheriff-substitute (CAMPBELL) pronounced this interlocutor—"Finds it proved, in point of fact, that the goods specified in the account libelled were furnished to the defender, and invoiced at the various times when they were received by him, at the prices charged for them in the account libelled: Therefore repels the defences, and decerns against the pursuer for the sum of £28, 6s. sterling, with £3, 16s. 7d. of expenses."

The Sheriff (DAVIDSON) adhered.

The defender appealed.

By section 9 of the Debts Recovery Act it is enacted that, unless required by either party, it shall not be necessary for the Sheriff to take a note of the evidence, or of the facts admitted by the parties; but upon such requisition, which shall only be competently made before any parol evidence has been heard, and not afterwards, he shall take such note, setting forth the witnesses examined, and the testimony given by each, and the documents adduced, and any evidence, whether oral or written, tendered and rejected, with the ground of such rejection, and a note of any objections taken, with admission of evidence, oral or written, allowed to be received, &c.

Section 10 enacts that, where neither party has required the Sheriff to take such note, it shall not be competent to appeal against his judgment in so far as his findings in part are concerned, and such findings in part shall be final, and not subject to review by any Court.

Section 12 enacts that, in the event of an appeal, the Court shall hear the appeal without any written pleadings; but the Court may order the case to be reheard, and the evidence taken of new, or additional evidence to be taken, by the Sheriff or Sheriff-substitute.

GLOAG, for appellant, contended that the Sheriff had wrongly refused to allow him to enter on a certain line of proof, with the view of proving payment, and that he ought now to be allowed to enter upon it.

THOMS for respondent.

The Court held (1) that the defence stated involved no plea of payment, and was necessarily so understood by the Sheriff; and (2) that the consequence of the parties having neglected or declined to ask for a note of the evidence was, that the Court could not now inquire into the grounds of the Sheriff's judgment. He might have admitted incompetent, or rejected competent evidence, but by the Statute the Court could now only look at the facts as they were found by him: new or additional evidence could not be allowed where there was no record of evidence at all.

Appeal dismissed.

Agents for Appellant—Wilson, Burn, & Gloag, W.S.

Agent for Respondent—L. Mackersy, W.S.

Wednesday, November 25.

MURRAY (GALBRAITH'S TRUSTEE) *v.* EGLINTON IRON COMPANY AND BLAIR.

Landlord and Tenant—Mineral Lease—Agreement—Road—Illegal Use—Reparation—Surface Damage—Superior. Mineral tenants were entitled by agreement to sink a pit in a certain field, to which they were to have ish and entry by a road which led to a mansion-house, and which was the only access thereto. *Held* that the mineral tenants must not use the road for the purposes of their mineral traffic in a way inconsistent with the use of the road as an access