

with some other tenant who would have taken over the plant as at Whitsunday 1874, at its then value—that is, precisely at the value which the pursuer himself was to pay for it. All these details, however, must be dealt with, and necessarily only approximately dealt with, by the jury. I have tried to take everything into due account, and my verdict is for the pursuer. Damages assessed at £2000.

LORD JUSTICE-CLERK concurred.

The following interlocutor was pronounced:—

“Find the defenders liable to the pursuer in the payment of Two thousand pounds in name of damages for the injury sustained by him, and by the defenders having wrongfully retained possession of the colliery in question after the period at which they were bound to remove therefrom: Find the pursuer entitled to expenses up to the date of said minute of admissions, including the expense of said minute, and remit to the Auditor to tax the same and to report; and find no expenses due to either party after that date, and decern.”

Counsel for Pursuers—Mackintosh. Agents—Murray, Beith, & Murray, W.S.
Counsel for Defenders—Asher—Moncrieff.
Agent—Alexander Morison, S.S.C.

Friday, January 26.

FIRST DIVISION.

[Lord Young, Ordinary.

SCOTT v. KALNING.

Ship—Charter Party—Breach—Unseaworthiness.

A vessel became unseaworthy during a voyage for which she was chartered, and put into port for repairs. These were executed, but surveyors who were employed by the owner to examine her reported unfavourably, and advised that she should be further strengthened. This was not done, and she proceeded to sea. In a question between the shippers of cargo, which was damaged, and the owners—*Opinions (per curiam)* that the report by the surveyors, though not conclusive, operated to shift the *onus* of proving unseaworthiness from the shippers, and laid upon the owners the burden of proving the contrary.

Counsel for Pursuer—Lord Advocate (Watson)—Guthrie Smith. Agent—Thomas Dowie, S.S.C.
Counsel for Defender—Trayner—Thorburn.
Agent—P. S. Beveridge, S.S.C.

Friday, January 26.

FIRST DIVISION.

[Lord Rutherford Clark, Ordinary.

COLQUHOUN'S TRUSTEES v. ARCHIBALD ORR EWING & COMPANY.

Property—River—Alveus.

Held that the proprietor of land on the banks of a navigable non-tidal river has no right to raise in the bed of the river any structure which may tend to obstruct navigation.

Observations (per Lords President, Deas, and Shand) on the distinction between navigable tidal rivers and navigable non-tidal rivers.

Observed (per Lord President) that the right of the public over a navigable non-tidal river is akin to that of a right-of-way.

Observations per Lord President upon his remarks in the case of *Bucleuch v. Cowan*, December 21, 1866, 5 Macph. 214, and upon the case of *Bickett v. Morris*, 2 Macph. 1052, 4 Macph. (H. of L.) 44.

Opinion (per Lord Deas) that the right of free navigation in a river where the tide does not ebb and flow arises from use only, and depends upon the nature and extent of that use.

Opinion (per Lord Shand) that if a non-tidal river be navigable, and a natural highway between public places, it is not necessary that it shall have been previous use to entitle the public to vindicate a right to use it.

Acquiescence.

An action was brought for the purpose of having it declared that a river was a navigable river, free and open to the public, and that the piers of a bridge which the defenders were erecting in the *alveus* of the river at a point where they were proprietors on both sides, “do at present and will when completed obstruct the free navigation of the said river;” and for decree ordaining the defenders to remove the said bridge and piers. The defenders founded upon a letter written to them by the pursuers' predecessor agreeing to make no objection to the erection of the bridge, “provided his fishings and other rights are not interfered with.”—*Held* that the pursuers were not barred by acquiescence from insisting in the action, as it had for its object the vindication of their right, as representatives of the public, to use the river for the purposes of navigation.

Opinion (per Lord Mure, diss. from the other Judges) that the object of the action as laid was simply to have the bridge removed on the ground that it obstructed the navigation of the river, and that therefore the pursuers could only succeed (in view of their predecessor's letter) if they instructed a case of injury to their own patrimonial rights.

The trustees of the late Sir James Colquhoun of Luss raised this action against Archibald Orr Ewing & Co., calico printers and turkey-red dyers, Levenbank, concluding, firstly, for declar-