Friday, June 22.

FIRST DIVISION.

[Lord Curriehill, Ordinary.

BAIRD AND OTHERS *v.* DEWAR.

Shipping Law—Collision between a Steamer and a Yacht, where the latter left her moorings in a crowded anchorage and crossed the course of the former.

Held that a yacht which lay at her moorings in a bay used as an anchorage on the Clyde, and crowded with shipping, was not bound to wait, before leaving them and setting sail out of the bay, until a steamer which was calling at a pier close by had left it and had passed the place where the yacht was likely to take her course.

Observed (*per* the Lord President) that there was a recent case where his Lordship had held that a vessel was justified, according to article 19 of the Board of Trade regulations for preventing collisions at sea, under section 25 of the Merchant Shipping Act 1862, in departing from the ordinary rules of the road "in order to avoid immediate danger."

This was an action of damages for collision. A Clyde river steamer had just left Gourock Pier to proceed up the river towards Greenock, when a yacht, which had left her moorings in the bay during the time that the steamer was lying at the pier, was observed to be about to cross the steamer's bow. The master of the steamer disobeyed the rules of the road, according to which he should have passed under the yacht's stern, and a collision resulted. In an action of damages for loss thereby sustained, at the instance of the yacht owners, the steamboat owner, in defence, founded, *inter alia*, on article 19 of the regulations for preventing collisions at sea, under section 25 of the Merchant Shipping Act 1862, which enacts that "in obeying and construing these rules due regard must be had to all dangers of navigation, and due regard must also be had to any special circumstances which may exist in any particular case rendering a departure from the above rules necessary in order to avoid immediate danger."

The Lord Ordinary, after other findings of fact, found also that in this case the departure from the ordinary rule of navigation was not justified, but that there was contributory negligence on the part of the yacht, because "according to the practice of seamen, and under the circumstances of this case, the pursuers neglected the precaution of remaining by their moorings until the 'Marquis of Lorne' had left the pier and had proceeded so far on her course as to render the chance of collision improbable." The damage was therefore divided by his Lordship's interlocutor between the pursuers and defender.

The pursuers reclaimed.

At advising—

Lord Presedent—[After concurring with the Lord Ordinary in the preliminary findings of fact]—The Lord Ordinary goes on to find that "the pursuers neglected the precaution of remaining by their moorings until the 'Marquis of Lorne' had left the pier," and that there was therefore joint negligence. He accordingly deals with the case as one of average loss, and that inference is undeniable. But it appears to me that in the relative positions of the vessels, the steamer being at Gourock pier, and stopping there at a stage on her way, and the yacht lying at her moorings, there was no obligation on the latter to remain there. The time during which a steamer may remain at one place of call is uncertain. It depends on the business she has to do there, and she may be detained by a variety of circumstances. It is certainly a matter of an indefinite kind. I cannot say I can find any law for the position adopted by the Lord Ordinary, that the yacht was bound to wait until the steamer left the pier and had passed the place where the sailing vessel was likely to take her course. She might then have been detained any length of time at her moorings. Another steamer might come up in the interval, and it would be doubtful how long a vessel might thus be kept waiting at her moorings.

[His Lordship further agreed with the Lord Ordinary that on the evidence the case was not one in which the steamer was justified in neglecting the ordinary rules of the road in order "to prevent immediate danger," but added that in a recent jury trial arising out of a collision he had told the jury that he thought these rules had been properly set at nought in the circumstances of the case.]

Lord Deas, Lord Mure, and Lord Shand concurred.

Decree was given against the defender for the whole sum of damages as assessed.

Counsel for the Pursuers—Trayner—Maclean. Agent—John Galletly, S.S.C.

Counsel for the Defender—Asher—M'Kechnie. Agents—Campbell & Smith, S.S.C.

Saturday, June 23.

SECOND DIVISION.

STEWART *v.* COLTNESS IRON COMPANY AND ANOTHER.

Reparation—Master and Servant.

Where a miner, who had been injured by the fall of a part of the roof of a mine, brought an action of damages against the mining company and their manager, on the ground that the accident had been caused by their failure to supply prop-wood in terms of the special rules framed under the Mines Regulations Act 1872—defenders *assoilzied*, in respect it was proved that there was an ample supply of wood at or near the pit-head, although there was a conflict of evidence whether it had been supplied at the working faces.

Observations (*per* Lord Justice-Clerk) on the law regarding such a claim.

This was an action of damages by a miner named Stewart against the Coltness Iron Company and Dewar, the manager of the company, for injuries received by him by a fall of the roof at a working

face. The pursuer averred that "the defenders or their managers, roadsmen, or other servants (whose names the pursuer does not know, but for whom the defenders are responsible)" had, in violation of the special rules framed under "The Mines Regulations Act 1872," failed properly to support and prop the roof of their pit, and to have a supply of timber for props always ready at the place in the pit where the miners were.

There was a conflict of evidence as to whether there was timber at the working faces, but it was proved that there was plenty of timber at the pit mouth, and that the manager had received no complaint of want of timber.

The Sheriff-Substitute (GUTHRIE) found that the pursuer had been injured, but not through the fault of either of the defenders.

The Sheriff (CLARK) on appeal recalled this interlocutor, and gave the pursuer £100 damages.

The defenders appealed.

At advising—

LORD ORMIDALE and LORD GIFFORD substantially adhered to the judgment pronounced by the Sheriff-Substitute.

LORD JUSTICE-CLERK—I do not differ from the proposed judgment. But for the series of decisions relative to the conditions which are implied in every contract of service, I should have been inclined to hold that, in so far as these regulations related to matters in which any individual servant had an interest, they constituted the counterpart of the obligations incumbent on the servant, and were things which the master, by himself or his servants, undertook to do as his part of the contract. It would not have occurred to me that it made the slightest difference whether the work was a large or a small one, or whether the master was or was not expected to do these things personally. But it has now been conclusively fixed that the obligation incurred by the master under such a contract is one of an entirely different description, namely, to appoint competent servants to discharge these duties; and that there was no obligation whatever to supply these miners with prop-wood on the part of the only persons with whom the pursuer contracted, so that, as the law now stands, the miner is bound to work, and the master is not bound to supply him with the necessary materials to enable him to work in safety, but only to appoint persons fairly competent to do so.

But, then, it is said this duty is placed on others with whom the miner has no contract, and that his remedy lies against them. The present case is not a bad practical example of the security thereby afforded, if the defenders' argument be sound. The manager throws it on the oversman, the oversman on the fireman, the fireman on the drawer, until, however gross or glaring the neglect, it is impossible to fix liability on anyone. It comes to this, according to the defenders, that no one contracted with the miner to give him prop-wood—that there were persons who had undertaken to do this by a separate contract with another, but that who these persons are it is impossible to say.

This is the result of the decisions, and they are quite conclusive on the present case as far as the Coltness Company is concerned. The company never undertook to furnish the pursuer with prop-wood, and therefore cannot be responsible for not having furnished it; and, as far as they are concerned, they must be assoilzied if the servants appointed were competent, and there is no proof that they were not.

The case against the manager stands somewhat differently. If I were to hold it proved that prop-wood was not duly supplied, I have no doubt whatever that, *prima facie* at least, the manager is responsible, and must discharge himself. If the manager's obligation comes in place of that of the master, it must be read as part of the conditions of the service. Now, the manager was bound to see that prop-wood was supplied to the miners, not to do it himself, but to see it done. This is plain from regulation No. 2. It was therefore for the manager to show that this duty was performed, and on that matter I should have no doubt, had it been proved, as it lay on the pursuer to prove, that the prop-wood was not supplied. But the evidence on this hand is so conflicting that, rather reluctantly, I am obliged to concur in the judgment, although remaining under the impression that the regulations were most imperfectly carried out in this work.

The Court assoilzied the defenders.

Counsel for Pursuer (Respondent)—Asher—Lang. Agents—J. & W. C. Murray, W.S.

Counsel for Defenders (Appellants)—Balfour—Alison. Agent—John Gill, S.S.C.

Saturday, June 23.

SECOND DIVISION.

SPECIAL CASE—WAUCHOPE'S EXECUTOR *v.* MRS WAUCHOPE.

Domicile — Succession — Where an Anglo-Indian Domicile had been acquired before the Act 21 *and* 22 *Vict. cap.* 106, *and the Indian Succession Act* 1865.

A Scotchman joined the Civil Service of the East India Company in 1841, and, with the exception of two short absences, resided in India from 1842 to 1873. He was on leave of absence on furlough in Europe when he died in 1875. In a question as to the domicile of the deceased, *held* that it was Anglo-Indian, and therefore, for the purposes of succession, English, and that neither the Act 21 and 22 Vict. cap. 106, vesting the territories of British India in Her Majesty Queen Victoria, nor the provisions of the "Indian Succession Act 1865," operated any change when an Anglo-Indian domicile had been acquired before these Acts came into operation.

Observations on the case of *Bruces* v. *Bruce*, M. 4617, H. of L. 3 Pat. App. 163.

This was a Special Case presented by David Baird Wauchope, Esq., wine merchant in Leith, executor-nominate *quoad* estate in Great Britain of the deceased Samuel Wauchope, C.B., under his will, dated 21st July 1875, of the first part; and Mrs Catherine Baldock Fagan or Wauchope, widow of the said Samuel Wauchope, of the