valuable right than merely a right of access by itself.

On the whole matter I agree with your Lordship in thinking that we should adhere to the Sheriff-Substitute's interlocutor.

LORD ADAM was on circuit during the hearing of the cause, and delivered no opinion.

The Court affirmed the judgment of the Sheriff-Substitute.

Counsel for Petitioners—Mackintosh—Murray. Agents—Mitchell & Baxter, W.S.

Counsel for Respondent—Strachan—G. Wardlaw Burnet. Agent—W. T. Sutherland, S.S C.

Tuesday, January 27.

SECOND DIVISION.

[Lord Fraser, Ordinary.

DET NORSKE BJERGNINGS OG DYKKERCOMPAGNI *v.* M'LAREN AND OTHERS.

Foreign—Decree Conform—Proof.

An action was brought to enforce the decree of a foreign court awarding to the pursuer a sum as due for salving the defender's vessel. The defence was that the pursuer was not a salvor, but was employed to give his services for a reasonable sum to be agreed on; that there was no proper suit or inquiry in the foreign court, which had no jurisdiction over the defender, whose captain did not know the language of the place, and had never submitted the matter to the foreign court; and that the foreign court proceeded on incompetent evidence, and acted at variance both with the law of Scotland and of the foreign country. The Lord Ordinary allowed a proof of the averment that the captain did not understand the language of the place or agree to submit the question, and that there was no proper trial or inquiry. The Court *recalled* the interlocutor, and allowed the parties a proof of their respective averments.

In July 1884 the ship "Ardanbhan" of Glasgow went ashore on the coast of Norway near Egersund. She was in a position of danger, lying as she was upon the rocks, and leaking, and a telegram was sent to Christiania for assistance. Assistance was brought by two steamers belonging to a salving company in Christiania (the pursuers). On the arrival of their steamers at the scene of the accident, the captain of the "Ardanbhan" refused to agree to pay any specific sum for their services, but employed them to do their best to get the ship into a position of safety.

The vessel was got off and taken into Egersund. While she lay there the salvage company applied, in accordance with Norwegian law, to the Sheriff at Egersund for a Maritime Court to determine what should be allowed for salvage services. A Court was found and sat, and ultimately held the company entitled to salvage money, and awarded one-fourth of the value of what had been salved, this sum amounting to a sum equal in British money to £2777, 15s. 6d. The master left the port without paying it, and this action was brought to have decree conform to that of the Norwegian Maritime Court for £2777, 15s. 6d., being the sum thereby allowed, or otherwise of the sum of £5000.

The pursuers produced a translation of the decree of the Maritime Court, on whose decree they founded. It bore that the master of the "Ardanbhan" had with his agent agreed to attend without a summons, and that he was present with his agent in Court during the proceedings, and had protested that the company (pursuers) were not salvors, but that all the Court had to determine was to fix a payment for their services in aid of the captain and crew.

It was certified by the British Vice-Consul at Christiansand that the magistrate presiding was the competent authority on maritime matters for the district, and that the award bore his signature.

The pursuers maintained that they had salved the vessel with great danger, difficulty, and expense, and that the appearing before the Maritime Court was agreed on by them with the captain and his agent, the terms on which (on their arrival at the wreck, and the captain's refusal to agree to pay any specific sum) they gave their services being that their remuneration should be fixed by the Maritime Court.

The defenders averred that the agreement was that the amount to be paid should be fair and reasonable. They denied that the pursuers had been put to loss or danger by their services. They tendered £800 in full of all claims. With regard to the proceedings of the foreign Court, they averred (Ans. 7) as follows:—"Explained that the captain of the s.s. 'Ardanbhan' does not know Norwegian, did not agree to have the question of salvage settled by the Norwegian Courts, and was not aware that any Norwegian Court was professing to settle said claim. Explained further that there was no proper trial of the cause; that there was no inquiry into the facts, and no opportunity given to the owners of the s.s. 'Ardanbhan' or the master to consider or answer the claim alleged to have been made, and that the Court proceeded on hearsay, and on inferences from facts which were not legally proved. The alleged judgment proceeds on facts alleged by the salvors, but which never existed, and is erroneous in fact and in law. Explained further that the owners of the s.s. 'Ardanbhan,' the present defenders, were no parties to said proceedings, were not cited thereto, are not liable thereunder, and have in no way recognised or submitted to the authority of the Norwegian Courts, which have no jurisdiction over the defenders, and had none at the time of said proceedings. Said proceedings are not binding on the Scottish Courts, either according to the law of Norway or the law of Scotland. Explained further that the award includes compensation to persons other than the pursuers who had assisted in the salvage." . . .

The Lord Ordinary pronounced this interlocutor:—"Allows to the defenders a proof of their averments contained in the answer to the seventh article to the condescendence, to the effect that the captain of the steamship 'Ardanbhan' did not know the Norwegian language, and did not agree to have the question of salvage settled by the Norwegian Courts, that there was no proper trial of the cause, and no inquiry into the facts,

and no opportunity given to the captain to answer the claim for salvage; and to the pursuers a conjunct probation, &c.

"*Opinion.*—The pursuer, N. C. Bing, engineer in Christiania, as sole partner of the Norwegian Salvage and Diving Company, seeks by this action to enforce a judgment in his favour by the Maritime Court in Egersund in the kingdom of Norway, for the sum of £2777, 15s. 6d. awarded to him for salvage services rendered to the defenders on the 4th of July 1884. It is not disputed that the service was rendered, and the judgment of the Maritime Court of Egersund shews that the sum claimed was awarded to the pursuers.

"The defenders object to the enforcement of this decree upon various grounds. It is set forth by the pursuers upon the record that when they arrived with two steamers in order to effect the salvage, 'it was agreed between the parties' (that is to say, between them and the captain of the defenders' vessel) 'that the remuneration to be paid to the pursuers for their services should be referred to the determination of the Norwegian Maritime Court.' This averment is denied, except to the effect that 'it was agreed they' (the pursuers) 'should be paid what was fair and reasonable;' and the defenders further aver that the captain of the defenders' vessel did not agree to have the question of salvage settled by the Norwegian Courts, nor that it professed te settle any such claim, that there was no inquiry into the facts, and no opportunity given to the master to answer any such claim made. All this is contradicted by the record of the proceedings before the Maritime Court, which sets forth that 'The master of the steamer, Captain Dean, with his agent, Consul Puntervold, were present in the Court,' and the arguments which Captain Dean and his agent used are set forth in the record of the proceedings, with the answer thereto by the pursuer, and then at the close of this narrative of the argument it is stated that 'the parties hereupon left the dispute to the Maritime Court's decision.' If this were to be held as true, the Lord Ordinary would have no difficulty whatever in at once granting decree conform, it being now—after some vacillation—settled, that while a foreign judgment may be impeached on the ground of incompetency of the court, or of a violation of the principles of international law, or because of a denial of justice by reason of a refusal to receive evidence or to hear the parties, yet it will be unassailable merely on the ground that the conclusion arrived at by the foreign court was unwarranted as to the facts and erroneous in regard to the law. So far as appears from the proceedings in the present case, everything seems to have been formally gone about. Whether the Court that pronounced the judgment would have had jurisdiction independent of agreement is not averred, but it is positively averred that it was agreed to refer the matter to the Maritime Court, and if so, this would make the decree valid, even although jurisdiction did not exist otherwise (see Westlake's Treatise on Private International Law, p. 375). But then the averment that there was an agreement is denied; and further, it is set forth that no opportunity was given to the captain of the vessel to answer the claim for salvage. The statement in the decree in opposition to this cannot be taken as setting forth the facts when the defenders offer to prove that the statement is not true. The Lord Ordinary has therefore no other course open to him but to allow a proof as is done by the interlocutor."

The defenders reclaimed.

At advising—

Lord Young—I think the captain of a ship which gets upon a rock, as this ship did, has very large powers committed to him to represent and to bind his owners for the purpose of having his ship salved. The ship was taken out of a very dangerous position and rescued along with her cargo. The averment that the pursuers make here is that this ship, which with her cargo was of the value of £14,000, being upon a rock, the captain made a bargain with the salvors who came out with steamboats and appliances of a very general and sufficient description. It is said that he said to them—"Do your best to aid me and my crew in rescuing my steamer and taking her into Egersund, and you shall be paid what is reasonable." And to that extent the bargain which he made is admitted, and it is a very general and safe agreement:—"Do your best and I agree to pay you what is reasonable. I won't undertake to pay you any slump sum whatever the result of your efforts may be, but what is reasonable you shall be paid if the vessel is taken into port." The pursuers go further than this admission goes. They say the captain agreed to pay what should be determined to be reasonable by the Nautical Court of the place. They went before the Nautical Court of the place, according to the pursuer's averment—which he undertakes to prove—after the vessel was rescued from the rocks and taken into port, the Nautical Court consisting of the Sheriff in Egersund, and two nautical men sitting as assessors with him. The pursuers aver that these nautical assessors knew all about the accident; that the ship's difficulties all occurred under their eye, and that a more suitable tribunal, whether competent or not in the first instance, could not be got. They also aver that both parties abstained from leading evidence before the judges who were so very well versed in the matter, and that these judges assessed the amount of salvage payable at £2700. So far all went well, but the captain escaped with his ship that very night and left the salvors to pursue him here. This they do in the present action with a double conclusion, the first praying the Court to enforce the judgment of the Nautical Court of Norway for £2700, and the other, if there is any difficulty in the way of the first, to try this as a salvage action, and to pronounce decree for what shall appear to be a just sum, the pursuers saying that that just sum is £5000, and the defenders tendering only £800.

The first question that presents itself is, whether the judgment of the Nautical Court is a judgment binding on the defenders, the owners of the vessel? That question depends on the right of the master to represent the owners before the Court, and, looking to the regularity and reasonableness of the proceedings, to allow that Court constituted as it was to determine the amount without evidence, the parties renouncing probation. Now, I think these questions do depend or may depend upon the whole circumstances of the particular case in which the master acted. If he was acting reasonably for his owner's interests before a court of competent jurisdiction, and the proceedings in which were

regular, I should be of opinion that the judgment of the Court was good against the owners, and that we ought to enforce it.

The Lord Ordinary has allowed a proof to the defenders of their averment to the effect that the captain did not agree to take the assessment of the Court in question, did not know the Norwegian language, and did not agree to have the question of salvage settled by a Norwegian Court, and that there was no trial of the case, and no inquiry into the facts, and no opportunity given to the captain to answer a claim for salvage. The pursuer is content that that inquiry shall take place. Indeed, he seems to concede that he could not claim the judgment in terms of the Norwegian Court's decree without evidence, or without the defender having an opportunity of leading evidence upon this point. That necessarily involves going to Norway to take evidence, and if the parties go to Norway to take evidence it appears to me that the reasonable course is for the pursuers to prove their averments as to the nature of this Court and the proceedings before it, to show that the Court was one of competent jurisdiction, and that the proceedings before it were regular. And if the master's conduct in leaving the Court, constituted as it shall be shown to have been, to determine the matter without evidence shall depend upon the whole circumstances of the case, as I think it may, I am of opinion that the most reasonable course, because it is that most likely to guard the legitimate interests of the parties, not only in ascertaining the exact merits of the case, but also in the important matters of economy and despatch, will be observed in allowing the pursuer a proof of his whole averments, including the circumstances in which the master made the bargain with the salvors while he was yet upon the rock—the bargain which is said to have been to the effect that if they rescued him—his ship and cargo—he would pay what the Nautical Court determined to be reasonable. I repeat that if the proceedings were regular before a Court of competent jurisdiction, I should myself be very hard to move to interfere with the sum which that Court awarded, dealing with the case under the alternative conclusions. That may, however, have to be the result, if we shall have to deal with the case under the alternative conclusion; and if the pursuer is allowed a proof of his whole averments, I think, without any material increase of expense in the result, the Court will be in a position to determine the case under the one conclusion or the other without further procedure or evidence thereafter—in a position to say under the first conclusion whether the captain represented the owners in making the bargain, which was a reasonable one, to pay what the Nautical Court should determine to be a reasonable sum, and that the proceedings were regular; and under the other conclusion, upon the opposite assumption, to say whether the proceedings were such as to bind the owners. I do not see that there can be very much in what I propose in addition to what would be the matter of proof under the Lord Ordinary's interlocutor. It would merely be the exact position where the ship was on the rock within sight of Egersund, and what passed between the captain and the salvors. Beyond that there seems to me to be nothing at all except the efforts which were made—and these could be put within a reasonable compass—to take the ship off. The parties might agree, if they are wise, as to the value of the ship salved, and the value of the cargo on board. These matters seem to have been the subject of inquiry in Norway—we were told so—and that the result of the inquiry was that the two together were worth £14,000. With the explanation I have given, and which does not need to be embodied in the interlocutor, I propose that we remit the case to the Lord Ordinary to allow the parties a proof of their respective averments.

Lord Craighill—I concur in the judgment your Lordship has proposed. Had it been in doubt that a proof was at all necessary, the regret that one would have felt in entering on an inquiry so large would have been considerable; but it is conceded on both sides that there must be a proof to determine whether or not the judgment pronounced by the Court in Norway is binding on the defenders. As inquiry is absolutely necessary, it appears to me, for the reasons your Lordship has explained, that the inquiry should be enlarged, so that we may make sure that once the proof has been reported there will, under one conclusion or another, be a judgment by which justice will be done to both parties.

Lord Rutherfurd Clark—I think upon the whole the course which your Lordship proposes is the most expedient for all parties. That there is to be a proof is matter for regret, but considering there is to be one, I think it is more expedient that no chance shall be left for a second proof. I therefore agree that there should be a proof of the nature your Lordship indicated. I abstain from giving an opinion on the legal questions which have been more or less argued to us.

Lord Young—We will recal the interlocutor of the Lord Ordinary, and remit to him to allow the parties a proof of their averments, and to each a conjunct probation. We reserve all questions of expenses.

The Lord Justice-Clerk was absent.

The case was subsequently compromised.

Counsel for Pursuers—Salvesen. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for Defenders—M'Nair. Agents—J. & J. Ross, W.S.

Saturday, July 11.

FIRST DIVISION.

[Exchequer Cause, Lord Fraser.

THE LORD ADVOCATE *v.* SCOTT

Revenue—Stamp—Receipt—Stamp Act 1870 (33 *and* 34 *Vict. cap.* 97,) *sec.* 23.

Circumstances in which it was *held* that the provisions of the Stamp Act of 1870 had not been complied with, and penalty inflicted.

This was an information brought before the