

refreshment rooms or do not let them. The question is just whether the refreshment rooms are part of the buildings which belong to the railway company, and that fact is not in dispute.

The Court found and declared that the refreshment rooms were, as regarded the public water-rate and the police assessment so far as it was applicable to water, to be assessed at the nearest aggregate sum of pounds sterling to one-fourth of the annual value thereof entered in the valuation roll.

Counsel for the First Parties (Police Commissioners of Oban)—Jameson—M'Kechnie. Agents—Gill & Pringle, W.S.

Counsel for the Second Parties (Callander and Oban Railway Company)—D.-F. Balfour, Q.C.—R. Johnstone. Agents—Hope, Mann, & Kirk, W.S.

Wednesday, December 16.

SECOND DIVISION.

[Lord Trayner, Ordinary.]

BRUCE AND OTHERS (FISHERMEN OF BODDAM) v. AITON.

Harbour—Harbour Lights—Obligation of Proprietor of Harbour to Exhibit Lights.

The proprietor of a harbour who exacts harbour dues is bound, so far as these dues will go, to light and otherwise maintain the harbour.

The proprietor of a harbour was sued by the fishermen using it for declarator that he was bound to maintain and exhibit at his own expense certain specified lights, and to have him ordained to do so. It was proved that the harbour dues yielded a revenue to the proprietor, but that the revenue was not enough to provide for the lights and also to pay the interest on a sum of money expended by him on improvements on the harbour executed by him under a Provisional Order obtained from the Board of Trade. The Court held that under the local statutes and the relative Provisional Order of the Board of Trade applicable to the harbour, the proprietor was bound to apply the revenue derived from the harbour dues to the maintenance of the harbour (which includes lighting) in the first instance till they were exhausted, if necessary, and that the pursuers were entitled to declarator to that effect, the particular manner in which the obligation was to be carried out being left to be prescribed by the Commissioners of Northern Lighthouses.

In 1845 the Earl of Aberdeen, being then proprietor of the estate of Boddam, including the village of Boddam and the harbour of Boddam, and the piers and works therewith connected, obtained an Act of Parliament (8 and 9 Vict. c. xxv.) for improving and maintaining the harbour. The Act proceeded upon the narrative that it would be of great advantage to the public, and especially to those using the harbour, if it were to be improved in the manner specified; that the Earl was willing to make the improvements at his

own expense; and that in consideration of the expense to which he had been and would be put for improving and maintaining the harbour, it was reasonable that he and his heirs and successors should receive the tolls, rates, and dues thereafter mentioned.

The Act, *inter alia*, contained the following provisions:—Section 57—“And be it enacted that it shall be lawful for the said Earl to contract and agree with any person to light the said harbour and other works with gas, oil, or otherwise, and to supply the said harbour and other works with water for the use of the shipping resorting to and using the said harbour and other works, as he shall think necessary and proper; provided always that no vessel using the said harbour shall be obliged to take water from the said Earl.” Section 62—“And be it enacted that it shall be lawful for the said Earl to erect beacons for the guidance of vessels, of such character, and to be exhibited in such mode, and to lay down such buoys of such description and in such situation within the limits of the said harbour, as shall from time to time be prescribed by the Commissioners of Northern Lighthouses in writing, signified under the hand of their secretary for the time being.” Section 63—“And be it enacted that it shall not be lawful for the said Earl to exhibit or alter, or to permit to be exhibited or altered, any light, beacon, or sea-mark without the sanction in writing of the Commissioners of Northern Lighthouses, signified under the hand of their secretary, first having been obtained in that behalf, and if any such light, beacon, or sea-mark shall be exhibited or altered, with such sanction as aforesaid, the same shall be of such power, description, and character, and shall be from time to time discontinued or altered as the Commissioners of Northern Lighthouses shall from time to time direct by new notice to the said Earl.”

Prior to the passing of the Act the leading lights of the harbour consisted of wooden lanterns with candles, which were provided and maintained by the fishermen. In 1849 Lord Aberdeen took the lighting into his own hands, and applied to the Commissioners of Northern Lighthouses to prescribe the character and position of the leading lights. The Commissioners prescribed certain leading lights, which were fitted with Argand burners, and maintained by Lord Aberdeen at his own expense until 1864, when he began to charge the fishermen 2s. 6d. a-boat for light dues, which were paid by them. The lights were exhibited from sunset to sunrise during the herring fishing season, from 1st July to 1st October.

In 1865 the estate of Boddam, including the harbour, was bought from the Earl of Aberdeen by William Aiton, the defender in this action. The leading lights were maintained and exhibited by him from 1865 to 1872, he levying a charge of 2s. 6d. per boat on the fishermen to defray the expense of so maintaining and exhibiting them. In 1872 he proposed to raise the contribution to 5s. per boat, and in consequence of the refusal of the fishermen to pay this advanced rate no lights were exhibited during the fishing season of 1872.

In 1873 an agreement was entered into between the defender and a committee of the fishermen, by which, on the narrative that the fishermen

wished to have the leading lights continued during the then ensuing fishing season, and had undertaken the charge and responsibility of lighting the harbour as required by secs. 62 and 63 of the Boddam Harbour Act and relative direction of the Northern Lights Commissioners, the defender handed over to the keeping of the committee the lanterns, lamps, and relative connections of the lights on certain conditions, on loan, to be put up, lighted, and watched at the committee's expense, and to be returned if demanded at the conclusion of any future fishing season, and any deficiency in value paid to the defender. The lights were thereafter maintained by the fishermen until the end of the season of 1883.

In 1878 the defender, in consequence of the raising of an action against him by the fishermen to have him ordained to repair the harbour, obtained from the Board of Trade a Provisional Order authorising him, instead of repairing the existing harbour, to execute certain new harbour works, and to levy certain other rates and dues. Section 36 of this order was as follows:—"After completion or permanent discontinuance or abandonment of the works authorised by this order, the undertakers shall, at the outer extremity of the works, or the completed portion thereof, exhibit from sunset to sunrise such light or lights, if any, as shall from time to time be directed by the Commissioners of Northern Lighthouses, and shall apply to those Commissioners for directions as to lighting, and the undertakers shall be liable to a penalty not exceeding £10 for every calendar month during which they omit so to apply."

This order was confirmed by the Pier and Harbour Orders Confirmation Act 1878 (No. 2) (41 and 42 Vict. ch. cxv.), sub. tit. "Boddam." Section 26 of this Act provided—"The rates received under this order, or, as the case may be, the rents received for the lease thereof, if the same are leased, shall be applicable for the purposes and in the order following, and not otherwise:—1. In paying the expenses of the maintenance, repair, improvement, management, and regulation of the existing harbour and the existing works thereof. 2. In paying the interest heretofore accrued or hereafter to accrue on money borrowed before the passing of the Act confirming this Order on the security of the harbour of Boddam, and of the rates and duties authorised by the Act of 1845. 3. In paying the costs of and in connection with the preparation and making of this Order. 4. In paying the expenses of the maintenance, repair, improvement, management, and regulation of the works authorised by the Order. 5. In paying, if and when required, the principal sum of the money borrowed as aforesaid. 6. In paying the interest accruing on any money borrowed under this Order. 7. In paying, if and when required, the principal sum of any money borrowed under this Order. 8. The surplus revenue (if any) of the harbour, after providing for the purposes aforesaid, shall belong to the undertakers for their own use."

On these new works the defender expended upwards of £9000. In 1883 the fishermen, holding that under the new state of matters introduced by the Provisional Order the defender was bound to light the harbour, intimated to him that they would discontinue the lights (which they in point of fact did at the end of that season), and asked

him if he intended to maintain them, which he declined to do.

In consequence of a communication from the Commissioners of Northern Lights, dated 17th July 1884, the defender immediately thereafter recommenced exhibiting the lights, and continued to do so till the 15th of September, when they were discontinued. He at the same time gave notice to the fishermen that a charge of 2s. 6d. per boat would have to be paid to him for light dues.

In December 1884 the present action was raised by Robert Bruce and others, all fishermen in Boddam, as a committee of management elected by the fishermen of Boddam for transacting their fishing affairs, and as individuals. The conclusions of the summons were—"That the defender, as proprietor of the said harbour of Boddam, is bound to exhibit and maintain at his own expense, from sunset to sunrise during the whole year, leading lights at the said harbour for the guidance of vessels and boats entering the said harbour; or otherwise, to exhibit and maintain at his own expense, from sunset to sunrise during the whole year, such light or lights at the said harbour as may be directed by the Commissioners of Northern Lighthouses, in terms of the 36th section of the Boddam Harbour Order 1878, confirmed by the Pier and Harbour Orders Confirmation Act 1878, No. 2: And the defender ought and should be decreed and ordained, by decree foresaid, to exhibit and maintain at his own expense, from sunset to sunrise during the whole year, the four leading lights which have been in use to be exhibited at the said harbour of Boddam, or otherwise such light or lights as may be directed by the Commissioners of Northern Lighthouses, in terms of the said 36th section of the said Order, confirmed as aforesaid; or otherwise, the said defender ought and should be decreed and ordained, by decree foresaid, to erect, exhibit, and maintain at his own expense such leading or other lights at such places and for such time as it may be found he is bound to erect, exhibit, and maintain in the course of the process to follow hereon."

The pursuers averred that the entrance to the harbour was narrow and difficult, and that it was in the highest degree dangerous for vessels or boats to attempt to enter the harbour after dark without the guidance of leading lights. They maintained that the defender was bound to maintain leading lights throughout the year, that the said leading lights having been erected and exhibited by the Earl of Aberdeen, under direction of the Northern Lights Commissioners, the defender was not without their (the Commissioners) sanction entitled to discontinue them, but bound to maintain them, and was in any view bound to exhibit such lights as they should direct, in terms of section 36 of the Provisional Order or otherwise.

The defender averred that he was, and always had been, willing to "maintain and exhibit the lights, conform to usage, on being paid the expense thereof by the fishermen for whose benefit alone they exist. It is further explained that, after applying the revenue of the harbour to the first three purposes specified in section 26 of said Order of 1878, there remains no balance of revenue, and, on the contrary, the harbour revenue does not meet the expenditure."

He pleaded—“(3) At common law, and by the statutes libelled, the defender is not bound to light the harbour at his own expense, but is entitled to levy dues therefor. (5) The defender should be assolzied, in respect he is not bound to light the harbour during the whole year, and, *separatim*, in respect that he is not entitled at his own hand to alter the usage of the harbour as to lights. (6) The defender being willing to light the harbour, and never having refused to fulfil his obligation thereanent, should be assolzied, with expenses.”

The Lord Ordinary, after hearing parties on the procedure roll, dismissed the action in so far as regarded the declaratory conclusions and the second alternative of the first petitory conclusion, and *quoad ultra* continued the cause.

“*Opinion*.—I know of no authority, and none was cited to me, under which the proprietor of a harbour, *qua* proprietor, can at common law be compelled to exhibit and maintain at his own expense such lights as are specified in the first alternative of the declaratory conclusion of the summons. As regards the second alternative of that conclusion, I am of opinion that decree in terms thereof would be superfluous, in respect it would be nearly repeating what has been already been declared to be the defender's duty by the higher authority of the Legislature, and it is not needed as leading to any petitory conclusion in this action, which I can at present sustain. I therefore dismiss the action so far as the declaratory conclusions are concerned.

“I also dismiss the action so far as it concludes for decree ordaining the defender to exhibit and maintain at his own expense such ‘light or lights as may be directed by the Commissioners of Northern Lighthouses,’ in terms of the 36th section of the Provisional Order of 1878, because the Commissioners have not ordered or directed the exhibition of any light such as is provided for by that section. That section provides that it shall be the duty of the defender to exhibit at the ‘outer extremity of the works (*i.e.*, the works authorised by the Provisional Order) or the completed portion thereof,’ such light or lights as the said Commissioners may direct. The only order or direction given by the Commissioners is that contained in their secretary's letter of date 17th July 1884; but I cannot read that as a valid order under section 36. It orders the maintenance of the ‘existing leading lights, four in number;’ but these are not, nor any of them, at the outer extremity of the works authorised by the Provisional Order, but are lights connected with the old harbour, and in use before the new works were authorised or executed.”

There remained the conclusion that the defender should be ordained to “exhibit and maintain at his own expense from sunset to sunrise during the whole year the four leading lights which have been in use to be exhibited at the said harbour of Boddam.”

The Lord Ordinary having again heard parties on the procedure roll, allowed a proof.

The defender lodged a “Statement of Revenue and Expenditure of Boddam Harbour for three years under the . . . Boddam Harbour Order

1878.” The details of the statement appear, so far as necessary, in the opinion of Lord Young. It showed that the income from the harbour was considerably greater than the outlay in maintaining it, but that when interest on the borrowed money was added to that spent there was a loss on the harbour.

The Lord Ordinary assolzied the defender from the whole conclusions of the summons.

“*Opinion*.—The only conclusion of the summons which remains now to be disposed of is that which concludes that the defender should be ordained ‘to exhibit and maintain, at his own expense, from sunset to sunrise, during the whole year, the four leading lights which have been in use to be exhibited at the said harbour of Boddam.’

“It appeared to me, when I disposed of part of the case on 12th March last, that the conclusion I have now to deal with was a petitory conclusion, designed to follow up and carry into practical effect the first declaratory conclusion, — which is that the defender ‘as proprietor’ of Boddam Harbour is bound to maintain the lights in question, — and I was then disposed to assolzie the defender from this conclusion, as I then did from the declaratory conclusion. I refrained from doing so, however, on two grounds — (1) because the pursuer had not limited the petitory as he did the declaratory conclusion, by the words ‘as proprietor;’ and (2) because there was a distinct averment — Cond. 6 — that the lights in question had been prescribed by the Commissioners of Northern Lighthouses under statutory authority. The latter averment being denied, I allowed a proof, and that proof having been led, I am now in a position to dispose of the remaining part of the case.”

In the conclusion of his note his Lordship gave his reasons for holding that the lights had not been prescribed by the Commissioners of Northern Lighthouses in 1849.

The pursuers reclaimed, and argued — The obligation on the defender here to maintain these lights was statutory, and independent of any question of revenue derived from the harbour. He was in a different position from the proprietor in the Leven case—*Officers of State v. Christie*, Feb. 2, 1854, 16 D. 454—against whom there was no statute pleadable. But even at common law lights were in a different position from repairs of harbour works. Lights were essential to safe navigation, and to the use of the harbour at all.

The defender replied — No obligation was imposed on the proprietor by the Act of 1845. The provisions of the Act were permissive merely, not imperative. The Act said merely, “it shall be lawful” to him, not “he shall be bound.” Such words had been decided in England not to intend an imperative obligation—*Julius v. The Bishop of Oxford*, L.R., 5 App. Cases 214—and at all events, if there were an obligation imposed by the Act, the fishermen had contracted themselves out of their right to exact fulfilment of it by the agreement of 1873.

At advising—

Lord Young delivered the opinion of the Court — The pursuers in this case are the

fishermen of Boddam, who are in the habit of using the harbour of Boddam, and who pay harbour dues for such use, which dues the defender, the owner of the harbour, lawfully exacts. This action, which was raised on 18th December 1884, has declaratory and petitory conclusions, having for their object the enforcing of the defender's duty, as owner of the harbour, to light it properly, not only during the fishing season, but during the whole year, and to enforce that duty upon him by compelling him to perform it. The Lord Ordinary has dismissed the action with respect to the declaratory conclusions and the second alternative of the first petitory conclusion, and has assolized the defender from the whole of the other conclusions of the summons.

The defender has pleaded before us that he is not in possession of funds to light the harbour; and he has also pleaded an agreement, dated in the year 1873, with certain fishermen, whereby they undertook the duty of lighting the harbour to their own satisfaction, certain dues which had theretofore been imposed upon them being at that time discontinued.

I may, so far as my own opinion goes, dispose of that agreement at once as a defence by saying that I think it affords no answer to this action at all. The pursuers are not parties to that agreement. It was an agreement terminable at any time, and, so far as I see, not enforceable by the one party against the other, but subsisting only so long as both parties were pleased to act upon it; and those who did act upon it, from 1873 and for some time thereafter, explained and excused their refusal to continue to do so by alleging that since it was entered into, a new statute, in pursuance of the Provisional Order referred to on this record, was passed in 1878, by which matters were put on another footing and increased harbour dues authorised and exacted.

Now, the question for us to consider is, whether the owner of a harbour is bound to light it at night? The Lord Ordinary says, in the note to his first interlocutor, that he "knows of no authority, and none was cited to him, under which the proprietor of a harbour *qua* proprietor can at common law be compelled to exhibit and maintain at his own expense such lights as are specified in the first alternative declaratory conclusion." Now, "at his own expense" may mean one of two things. It may mean expense beyond the harbour dues which are exacted for the time, and the Lord Ordinary may be very right in saying that a harbour proprietor—proprietor of a harbour from which he is drawing no revenue, or no sufficient revenue—is not bound to maintain or exhibit lights out of his own private purse and irrespective altogether of dues; in that sense of the expression "at his own expense" I do not think the Lord Ordinary has erred. I express no opinion, at all events, adverse to that which I have read from his note.

But there is another sense in which it might be meant, and that is this—that unless he has a clear revenue from the harbour, as a property or adventure in which he has invested money, he is not bound to maintain or light the harbour. Now, in that sense I cannot agree with the opinion which has been expressed. I think the common law is, that the proprietor of a harbour, who exacts harbour dues—I assume always lawfully—is bound, so far as the dues will go, to

maintain the harbour, and that the lighting of the harbour is included in the maintenance of it. For the harbour must be maintained not only during the day but during the night also and in order to the maintenance of it during the night lights must be provided; and if there is revenue sufficient for that purpose, taken along with the other maintenance of the harbour, the proprietor must provide that maintenance out of the dues, although the harbour should be the most unprofitable property in the world as an investment.

Now, without dealing unnecessarily with questions of a general nature not presented by the facts of the particular case, I have observed that the harbour here is a harbour which yields revenue, and very considerable revenue. We were not informed of the origin of the harbour, and it is unnecessary to the decision of any of the questions which were argued before us that we should know about its origin. At all events, we do not need to know more than we are told by the statute of 1845 and the subsequent statute by way of Provisional Order, or following upon the Provisional Order of 1878. Both of these statutes authorise harbour dues, and order the harbour to be maintained and upheld. The statute of 1845 contains this provision about lights in the 57th clause of it—"It shall be lawful to the said Earl" (that is, the Earl of Aberdeen, who was then proprietor of the harbour) "to contract and agree with any person to light the harbour and other works with gas, oil, or otherwise, and to supply the harbour with other works, and with water for the use of the shipping resorting thereto." Section 62 enacts that "it shall be lawful for the said Earl to erect beacons for the guidance of vessels, of such character, and to be exhibited in such mode, and to lay down such buoys, of such description and in such situation within the limits of the said harbour, as shall from time to time be prescribed by the Commissioners of Northern Lighthouses in writing, signified under the hand of their secretary for the time being."

The section which follows section 63 deals with the alterations of the lights, and it is in these terms—"And be it enacted that it shall not be lawful for the said Earl to exhibit or alter, or to permit to be exhibited or altered, any light, beacon, or sea-mark, without the sanction in writing of the Commissioners of Northern Lighthouses, signified under the hand of their secretary, first having been obtained in that behalf, and if any such light, beacon, or sea-mark shall be exhibited or altered, with such sanction as aforesaid, the same shall be of such power, description, and character, and shall be from time to time discontinued or altered, as the Commissioners of Northern Lighthouses shall from time to time direct by new notice to the said Earl."

Then the Provisional Order of 1878, which, I repeat, is statutory—it is confirmed by a statute—provides by the 36th section that "after completion or permanent discontinuance or abandonment of the works authorised by this order, the undertakers shall, at the outer extremity of the works, or the completed portion thereof, exhibit from sunset to sunrise such light or lights, if any, as shall from time to time be directed by the Commissioners of Northern Lighthouses, and shall apply to those

Commissioners for directions as to lighting, and the undertakers shall be liable to a penalty not exceeding £10 for every calendar month during which they omit so to apply."

I refer to these clauses only to show that the Legislature, both in 1845 and in 1878, contemplated that the harbour should be lighted—the harbour owner being authorised to levy very considerable dues. I do not occupy your Lordship's time by referring to the amounts of these dues which he was authorised to levy by the Act of 1845. We have in the print a table showing the revenue which the harbour yields under the Act of 1878, and there we have the income from the harbour dues: for the year 1882, £468, 14s. 1d.; for the year 1883, £363, 2s. 6d.; for the year 1884, £446, 4s. 2d. Thus in the year immediately preceding the date of this action, the summons of which was signed in December 1884, the income from dues is stated at £446, 4s. 2d. Now, the proprietor did expend a sum upon the maintenance, repair, improvement, management, and regulation of the old harbour in 1884. The sum he so expended was £118, 10s. That left a balance of revenue of £327, 14s. 2d. Now, that is the revenue of the harbour after deducting the £118, 10s., or rather after applying that amount—for "applying" is the more correct expression—to the maintenance of the harbour other than the lighting of it.

But this harbour does not appear to be a good property, for it seems, according to the table which I have already mentioned, that it is kept up by the defenders at very considerable expense and loss. There is the interest on money, which was borrowed under the Act of 1845, amounting to the sum of £233. Money was expended upon the harbour under that Act, and the interest upon the money so expended comes to that sum. In addition to that there is the interest on £8995, 11s. 3d., expended on new works under the order of 1878, at 5 per cent.—£449, 15s. 6d. There is thus evidently a loss upon the year of £292. The harbour, therefore, was a very bad investment. Deducting the income available for new works received in the year 1884 from the interest upon these works, namely, £449, 15s. 6d., leaves a loss for that year of £355. Therefore the proprietor has no clear revenue in his hands. The common law, however, does not suggest the notion that the owner of a harbour must have a clear revenue before he is to maintain it. He is bound to maintain it, and must make it an available harbour to the extent that the dues will go, although he should have no return for his money at all, whether he had to borrow that money or not. I should say that that was a clear enough proposition according to the common law. But the pursuers do not need to inquire into the state of the common law upon that subject at all, for here we have statute law, by which I mean that we have the statute confirming the Provisional Order of 1878, which by a clause not referred to on the record, and which was only discovered, I think, by one of ourselves in the course of the discussion, namely clause 26th, authorises the application of the revenue which the defender is empowered to levy; and it also prescribes the order of the application. What it enacts is this—"That the rates received under this Order, or, as the case may be, the rents received for the leases thereof" (showing that he might have let

it "if the same are leased, shall be applicable for the purposes and in the order following, and not otherwise." Now what is the first. "The revenue shall be applied in paying the expenses of the maintenance, repairs, improvement, management, and regulation of the existing harbour and the existing works thereof."

That is conclusive as to the order in which the money is to be applied. The income is to be applicable to that in the first instance before a penny of the money is taken for any other purpose whatever; and that is exactly according to the rule of the common law as I have understood it—in accordance with what the common law, in the absence of any statutory enactment, enforced upon the subject. The second item in the order of the application is paying the interest "heretofore accrued or hereafter to accrue" on money borrowed before the Act passed confirming the Order, on the security of the harbour of Boddam, and of the rates and dues authorised by the Act of 1845. The third item is the paying of the costs incurred in connection with the preparation of this Order; the fourth is in payment of the expenses of the maintenance, repair, improvement, and management, and regulation of the works authorised by this Order; the fifth is in paying, when required, the principal sum of the money borrowed as aforesaid; the sixth is in paying the interest accruing on any money borrowed under this Order. This is the sixth purpose, be it observed; and therefore it would be quite illegitimate under this statute, as it would, in my opinion, be at common law, to deduct the interest of the borrowed money from the harbour dues, and then say there was nothing remaining in the hands of the proprietors of the harbour to maintain it or to light it. If the income of the harbour will not maintain it and pay that interest, it is a bad investment, and that is all that can be said; but if the harbour dues are exacted, they must all be applied in the first instance in maintaining it, and, I repeat, maintaining it as an available harbour at night as well as during the day. If it is to be maintained as such, then it is essential that lights should be provided and maintained. I suggested in the course of the argument, and on consideration I adhere to it, as illustrative of the law upon the subject, that it would not signify whether the owner of the property applied his own money or money which he had borrowed to provide the harbour works under the order of 1878—I mean the £8995. I say it is no matter whether it is his own money which he so applies, money, it may be, taken out of another investment, or money which he borrows from creditors at a certain rate of interest. Nor does it signify to his legal duties and obligations that the expenditure had been made by a preceding proprietor, from whom he had purchased the works. It is simply a bad investment, whether he has applied his own money in making these works, or borrowed money for the purpose, or paid a preceding proprietor, who had himself expended the money, a price for which he had no return from the harbour dues—there being nothing for him after the expense of maintenance. The common law and the statute law which governs the present case is, that if there is revenue from the harbour dues, this must be applied until the dues are exhausted, if necessary, in the proper maintenance of the harbour for the

use of those from whom the dues are levied, although there should be nothing left to pay interest—an insufficient sum, or nothing at all to pay interest.

I am therefore of opinion that there is here in point of fact a harbour, with a revenue in the hands of the defender as the owner of the harbour, available for the purpose of maintaining that harbour, and that the providing of lights is included in the maintenance of the harbour,—the harbour not being, in the absence of such lights, available as a harbour at night.

It appears that the Commissioners of Northern Lighthouses approved and ordered the continuance of the four existing leading lights, and I apprehend, therefore, that these are proper lights. But I should not propose to your Lordships that we should at present conclusively determine what lights are to be provided and maintained. Indeed, it is a matter subject to change, for the Commissioners of Northern Lighthouses have authority conferred upon them by statute in that matter. Under that authority they might interfere at any time to order an alteration on the position or order of those lights, and I therefore think that we cannot with propriety or safety, or usefully to the parties, do more at present than declare the general obligation which is upon the defender as the owner of the harbour. It is evident that the wording of the declarator would require consideration; but his obligation, in a general way, is to provide and maintain at all proper times suitable harbour lights at his own expense. I think it is a somewhat unfortunate expression that occurs in the conclusions of the summons, and it is noticed by the Lord Ordinary. I mean the expression, “at his own expense;” but I think it must have been intended to mean out of the revenue which he derives from the harbour, although there should be no surplus left to pay interest, or to serve any personal purposes of his own. That is simply saying, in other words, “although there may not be anything to recoup him for his advances, or to keep him free from the payment of interest, for which he is otherwise liable.” But in the sense that he is bound to apply these dues—the revenue of the harbour—so far as they will go, to the maintenance of the harbour, including the provision of lights, there is no doubt about his obligation. He is bound to provide and uphold, at all proper times, suitable lights, in order that this harbour may be made available by those who pay the dues which he exacts. I think the pursuers are entitled to declarator to that effect—I think declarator to that effect would be sufficient for the purpose.

That is the opinion at which I have arrived after full consideration of the record, evidence, statutes, and the Provisional Order.

The Court pronounced this judgment:—

“The Lords having heard counsel for the parties on the reclaiming-note for the defender against Lord Trayner’s interlocutor of 14th July last, Recal the said interlocutor and the interlocutor of his Lordship of 12th March preceding: Find and declare that the defender as proprietor of the harbour of Boddam is bound out of the revenue of the harbour to provide and maintain, at all proper times, suitable lights for the harbour;

and decern; and *quoad ultra* continue the cause: Find the defender liable to the pursuers in expenses to this date,” &c.

Counsel for Pursuers (Reclaimers)—Comrie Thomson—Low. Agent—Alex. Morison, S.S.C.

Counsel for Defender (Respondent)—Pearson—Dickson. Agents—Hamilton, Kinnear, & Beatson, W.S.

Wednesday, December 16.

FIRST DIVISION.

WILSON (LIQUIDATOR OF THE NORTH BRITISH LACTINA MANUFACTURING COMPANY, LIMITED), PETITIONER.

Process—Certificate by Apprentices of Enrolled Law-Agent—Citation Amendment (Scotland) Act 1882 (45 and 46 Vict. cap. 77, secs. 3 and 4).

In a note by the liquidator in the winding-up of the North British Lactina Manufacturing Company, Limited, the certificate of intimation bore that the intimation had been made to the parties named in the interlocutor of Court by two apprentices to a writer in Glasgow, by posting, on certain dates named, in the Glasgow Post Office, a print of the note with a copy of the interlocutor endorsed thereon, in registered letters, and the certificate was signed by the apprentices. The Court, on their attention being directed to this fact by the Clerk of Court when the petitioner appeared to move in the Single Bills that the prayer of the note should be granted, *declined* to sustain an intimation so signed as complying with the 3d and 4th sections of the Citation Amendment (Scotland) Act 1882.

Counsel for Petitioner—Lang. Agents—W. & J. Burness, W.S.

Wednesday, December 16.

SECOND DIVISION.

[Sheriff of Lanarkshire.

ANDERSON v. BLACKWOOD.

Reparation—Carriage—Man Run Over in Street—Duty of Drivers.

A man walking in daylight on the carriage-way of a street was knocked down by a van which came up from behind. *Held* that the owner of the van was liable in damages, because it was the driver’s duty to avoid knocking the man down either by pulling up or changing his course, and it was no defence that he called out to warn him to get out of the way.

This action was raised by Thomas Anderson, miner, against John Blackwood, farmer, for reparation for personal injuries sustained by the pursuer by being knocked down in Bank Street, Coatbridge, by a van driven by the defender’s servant. When the accident occurred the pursuer was walking in the roadway a few feet from the pavement. The van came up behind him