in fact (1st) that on 15th May 1896 the pursuer was injured in her person by a horse and van belonging to the defender; (2nd) that the injury was caused by the said horse and van having been left unattended by the defender's servant in the public street, and at a place in close proximity to a railway, and that this was a dangerous place in which to leave the horse and van unattended; (3rd) that the said horse bolted when left so unattended: Find in law that the said accident was caused by the fault of the defender's servant, for whom the defender is responsible: Find the pursuer entitled to damages, and assess the same at the sum of £50 sterling, and decern the defender to make payment to the pursuer of the sum of £50, with interest thereon at the rate of £5 per centum per annum from this date until payment."

Counsel for the Pursuer—Dundas, Q.C.—Cook. Agents—Simpson & Marwick, W.S.

Counsel for the Defender—Salvesen—Hunter. Agent—W. B. Rankin, W.S.

Wednesday, November 17.

FIRST DIVISION.

[Lord Low, Ordinary.

KENDRICK AND OTHERS *v.* BURNETT AND OTHERS.

Foreign — International Private Law — Delict on High Seas—Lex Fori—Lex loci delicti commissi.

Where the alleged cause of action depends upon facts which have occurred on the high seas, the legal relation which results from it is to be determined by the personal law of the parties concerned, and not by the law of the country in which the action happens to be brought. Where, in such circumstances the personal laws of the parties differ from one another, the action cannot be maintained unless the pursuer is by the law of his domicile entitled to what he claims, and unless the defender is also liable, by the law of his domicile, to the claim made against him.

Rule of the Antwerp Congress of 1885 as to liability arising from collision on the high seas, *adopted.*

In a collision on the high seas, the "Firth of Solway" was run into and sunk by the "Marsden," and persons on board the former vessel lost their lives. Certain of their relatives raised an action for damages and *solatium* in the Scottish Courts against the owners of the "Marsden." Some of the pursuers were domiciled in Scotland and some in England. All the defenders were domiciled in England. The defenders did not object to the jurisdiction of the Scottish Court, but pleaded that their liability to make reparation to the pursuers ought to be determined by the law of their domicile, and averred that by English law no claim for *solatium* was recognised. The pursuers pleaded that the question being a matter of remedy for wrong done, ought to be determined by the law of Scotland as *lex fori.*

Held (*reversing* the judgment of Lord Low, Ordinary) that the defenders' liability could not be made to exceed that imposed upon them by the law of England.

On 19th April 1896 the barque "Firth of Solway" was run into and sunk by the 'Marsden" in the Irish Channel, nine or ten miles east of the Kish Lighthouse, and outside the territorial waters of the United Kingdom.

On 20th April the "Marsden" was arrested at Glasgow at the instance of the owners of the "Firth of Solway," as pursuers of an action of damages subsequently raised in the Court of Session against the owners of the "Marsden," and an action for limitation of their liability was raised in the Court of Session by the owners of the "Marsden." The jurisdiction of the Court was not disputed.

On 23rd September Edward Ruthven Kendrick, master of the "Firth of Solway," and others, raised an action of damages against John Walter Burnett and others, the owners of the "Marsden," for injuries received in the collision, and for *solatium* in respect of the deaths of certain of their relatives by drowning in consequence of the collision.

Of the pursuers, some were described in the instance as resident in England, some as resident in Scotland, one as resident in Ireland, and one as resident in Norway. The defenders were all described as resident in England.

The case was argued and decided on the footing that the parties should be taken to be domiciled in the country in which they were described as resident.

The pursuers, after averring that the collision was due entirely to the fault of those in charge of the "Marsden," proceeded—"(Cond. 5) In consequence of the said collision and consequent loss of said lives and personal injury, the pursuers have suffered loss and damage, and each of them is entitled to reparation and *solatium* in respect of the deaths of their several relatives as before condescended on."

The defenders denied that the pursuers had any claim upon them for *solatium.*

The pursuers pleaded, *inter alia*—"(1) The pursuer Edwin Ruthven Kendrick having been injured in his person, and his wife and daughter having been killed by or in consequence of the said collision, and the defenders being liable in reparation therefor, he is entitled to decree for £3000 as concluded for. . . . (3) By the laws of England and Ireland each of the pursuers is entitled to damages in respect of the loss of life of their respective relatives as before condescended on . . . all of said deaths and injury

having been caused through the fault of the defenders, and the sums sued for being reasonable, decree should be granted as concluded for."

The defenders pleaded—"(2) The rights and liabilities of parties fall to be determined by the law of England. (3) In respect that by the law of England the pursuers have no title to sue, or otherwise have no claim upon the defenders for *solatium* as sued for, the defenders ought to be assoilzied with expenses."

On 1st June 1897 the Lord Ordinary (Low) repelled the second plea-in-law for the defenders and assigned a day for the adjustment of issues.

Opinion. — "It is admitted that the 'Firth of Solway' was run into and sunk through the fault of those in charge of the 'Marsden.' The jurisdiction of this Court is also admitted, and the only question which was argued was, whether the pursuers are entitled to claim damages according to the law of Scotland?

"One of the pursuers Edwin Ruthven Kendrick claims damages for personal injury, and I do not suppose that any question arises in regard to him. All the pursuers, however, claim in respect of the loss of near relatives. If the law of Scotland is to be applied, these pursuers will be entitled to claim *solatium*, and it is that claim which the defenders desire to avoid. . . .

"The defenders argued, as I understood them, that assuming that the collision took place upon the high seas, the law of England must rule, because the 'Marsden' was an English ship, and the owners could not be subjected to a greater liability than that imposed by the law of their flag.

"If according to English law no claim of damages would lie in such a case, the question would have been entirely different. But it is admitted that the pursuers are within the category of persons who are entitled to claim damages in England under Lord Campbell's Act (9 and 10 Vict. c. 93).

"I think that the general rule that where reparation is claimed on account of what is a wrong, both according to the law of the place where it was committed, and according to the law of the country where the action for redress is raised, the remedy falls to be determined by the law of the latter country, and it seems to me that the measure of damages pertains to the remedy, and accordingly falls to be determined by the *lex fori*."

The Lord Ordinary having thereafter approved of issues in ordinary form, the defenders reclaimed and argued — All the issues should be disallowed. (1) A claim to damages for *solatium* fell within the sphere of right, not within that of remedy. It could not therefore be determined by the *lex fori*. A delict to be actionable in such circumstances must be actionable by some other law than that of the tribunal; for the law of the tribunal could never confer a right of action which had no existence by the law which was properly competent to create the obligation—Foote on Private International Jurisprudence, p. 515. This proposition had been affirmed in *Scott* v. *Seymour*, 1 H. & C., 219, and it formed the basis of the decisions in *Goodman* v. *London and North-Western Railway Co.*, March 6, 1877, 14 S.L.R. 449; *M'Larty* v. *Steele*, Jan. 22, 1881, 8 R. 435; and *Rosses* v. *H. H. Sir Bhagvat Sinhjee*, Oct. 29, 1891, 19 R. 31, where Lord Stormonth Darling had reviewed the previous cases at p. 34. In both *M'Larty* and *Ross*, there was a right of action to start with, though Lord Young's judgment in *M'Larty* seemed to indicate the view that the remedy created the right. In most cases the *lex loci* would give the measure of the pursuer's right and the defender's liability. But the decision in *Ross* would not have been different if the seduction had taken place, like the collision here, on the high seas. To hold that that made a difference implied that a foreign pursuer, by the mere accident of being able to found jurisdiction against a defender in the Scottish Courts, would thereby become entitled to vindicate a right arising out of a delict committed furth of Scotland, which the law of his own country denied to him. While the Court would refuse to enforce the municipal law of a foreign country by giving a remedy for an act which, according to its own principles, imposed no liability on the person who committed it, the converse also held good, and no liability would be held to attach to an act which, by the law of the place where it was committed involved no liability.—*The "Halley,"* 1868, L.R., 2 P.C. 193; *The M. Moxham*, 1876, L.R., 1 P.D. 107. The pursuers could derive no assistance from English maritime law. No decision or dictum could be found to the effect that a right to damages for *solatium* formed part of the maritime law; and in any event the rule was that the law of the vessel's nationality applied — *The General Steam Navigation Co.* v. *Guillou*, 1843, 11 M. & W. 877; *The Queen* v. *Keyn*, 1876, L.R., 2 Ex. D. 63. (2) The English pursuers, at all events, had no title to sue. Before Lord Campbell's Act (9 & 10 Vict. cap. 93) the right to damages for injury expired with the injured party, and that act, while it extended the right to the executor of the deceased, created no right to damages for *solatium*—Addison on Torts, p. 609. The decision in *Horn* v. *North British Railway Company*, July 13, 1878, 5 R. 1055, proceeded on contract, not on delict. Under Lord Campbell's Act, the relatives of the deceased could only raise an action if within six months of his death his executor had failed to do so. Here the relatives had raised their action within the six months, and the defenders had therefore no party in Court capable of giving them a valid discharge.

Argued for the pursuers — The issues should be allowed. The right of action might be regulated by the *lex loci delicti* or the *lex fori*, but in no case could it be regulated by the law of the domicile of parties. If the delict complained of had

taken place in England, no doubt the law of England would rule in determining the question of reparation, but the fact that it took place on the high seas made all the difference, and consequently the rule with regard to the exclusive jurisdiction of a foreign Court, given effect to in *Moxham, ut sup.*, had no application. This was emphatically laid down in the case of the *Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.*, 1883, 10 Q.B.D. 521, *per* Brett, L.J., 536, and Lindley, L.J., 544. The decisions of *Horn* and *M'Larty, ut sup.*, proceeded on the assumption that the claim to damages fell within the sphere of remedy, not of right. The English Court of Admiralty recognised and sustained the right to damages for personal injury and also for loss of life.— *The Nereid*, 1889, 14 P.D. 78; 6 Asp. N.S. 411. The same right was also clearly recognised by the Merchant Shipping Act 1894 (57 & 58 Vict. cap. 60), sec. 503.

At advising, on November 12th—

LORD PRESIDENT — This is an action of damages for injuries sustained in, and deaths caused by, a collision between two vessels, which is said to have been brought about through the fault of the defenders, who are the owners of one of the vessels. The collision, according to the record of both parties, is to be held to have occurred on the high seas. The whole of the parties to the case are of English domicile, with the exception of one of the pursuers, who is an Irishwoman. This exception is, for the purposes of the present question, merely nominal, as the English and Irish law on the matters now in hand are identical, and it may drop out of consideration.

The collision having occurred on the high seas, the rights and liabilities of the parties cannot be determined by the *lex loci delicti*. All the parties having the same domicile, the question is not complicated by any difference between the law of the injured and of the injuring party.

The pursuers, however, having arrested the defenders' ship and raised action in Scotland, maintain that the liability of the defenders is to be measured by the law of Scotland.

On the part of the defenders it is alleged that by the law of England the loss of a relative in no case gives rise to a claim for money *in solatium*, and they maintain that, at least in a question with other Englishmen, this law must prevail. The question now to be determined is, whether the law of England or the law of Scotland is to be given effect to on this point.

The simplest and, in my judgment, a perfectly legitimate way to consider the question is to assume the case (and it is said to exist in at least one of the claims grouped in this action) of an action raised solely to recover *solatium*. I shall assume, as is the case here, that neither by the law of the place where the act occurred, nor by the law of the domicile common to the pursuer and the defender, does the delict give rise to the claim. Is the claim good because it is sued for in a country according to the common law of which such a right does arise out of such an act? It seems to me impossible to support the affirmative on any reasonable ground. The question is, not of the remedy; it is whether a right exists, or ever existed, to found an action of any kind.

Adhering to the case which I have put by way of illustration, to wit, a claim of *solatium* pure and simple, let us suppose a collision to have occurred, not on the high seas, but in England, and, for simplicity's sake, not at sea but in a street, the pursuer and defender both being English. According to the pursuers' reasoning, if an action founded on arrestments were brought in Scotland, the Scotch law, as the *lex fori*, would rule. It is in vain to say that the eliminating the high seas alters the case, for the high seas have no municipal law of their own, and therefore contribute no disturbing element.

In my opinion, the *lex fori*, as such, has nothing to do with the question whether an act done abroad by one foreigner to a compatriot of his own gives rise to a pecuniary claim. If, as here, the act takes place on the high seas, and therefore no *lex loci delicti* prevails, no element exists to deflect the mind from the irresistible conclusion that the law common to the two parties must determine whether the act gives rise to the pecuniary claim which is the subject of the action. At least, no foundation appears for the claim that the *lex fori* shall rule.

The next question is, is the case different in which the sum sued for is made up in part by a claim for loss (unexceptionable by the English law) and in part by a claim of *solatium* (bad in English law)? If the principles already stated be sound, the combination of what *ex hypothesi* is a bad claim with a good one can make no difference. It would seem, on the foregoing principles, to become the duty of the Court to disallow the award of anything on that head of the claim which is bad by the law of the parties.

The Lord Ordinary has stated his ground of judgment in the last sentence of his opinion. His proposition is that "the measure of damages pertains to the remedy, and accordingly falls to be examined by the *lex fori*." His Lordship does not discuss the pure case of a claim for *solatium* unmixed with a claim of damage, in which case the question could not be represented as one of "the measure of damages." I do not know, therefore, whether in that case the Lord Ordinary would still hold the *lex fori* to apply, for if so, it must be on some other ground; and if he would not, then it looks as if the rule about the measure of damages led to illogical results.

No authority was cited to us showing that there is any rule that the measure of damages is to be determined by the *lex fori*. In many instances, and especially in details, it must be practically impossible to apply any other rule, and the avowal of this is less a conclusion of international law than the expression of a practical necessity. But as matter of doctrine I do not think it can

be asserted as a principle that the measure of damages is for the *lex fori*. And where in the inception of a cause notice is taken of a palpable and separable head of claim, which is bad in the law which would determine the existence or non-existence of the right sued on, I think that the Court is bound to give effect to the distinction.

That is the case here. Indeed, it may be questioned whether the claim for *solatium* is, properly speaking, a mere head in a claim of damage, and much may be said in support of the negative. But be this as it may, the claim stands out from the rest of the action in its legal character, and is capable of separate appraisement. This being so, no practical difficulty stands in the way of its being discriminated from the rest of the claim, and its validity determined by the same law by which it would be judged if it stood alone.

I am therefore for recalling the Lord Ordinary's interlocutor. The second of the defenders' pleas, which his Lordship has repelled, is expressed in somewhat wide terms, but the rest of the record shows its true application. I think therefore that it may be sustained, and the case remitted to the Lord Ordinary to proceed.

LORD ADAM concurred.

LORD M'LAREN—The only question which arises at the present stage is, whether the pursuers are entitled to *solatium* in addition to the damages which within certain limits may be claimed for loss of life caused by the defenders' fault.

It is admitted that the collision was the result of the faulty navigation of the "Marsden," an English vessel, and the *locus* of the collision is admitted to be a point in the Irish Channel about ten miles distant from land—in other words, on the high seas. The criterion of legal right and obligation in such a case is apparently the same which would be applied in the case of persons resident in unsettled territories having no local laws. I understand the rule to be that every person carries with him in such circumstances so much of the laws of his native country as is necessary for the regulation of the ordinary affairs of life. In this view the owners of the "Marsden," by their delict or *quasi*-delict, committed on the high seas, would come under an obligation to compensate the relatives of the passengers and crew of the "Solway" whose lives were lost, and the measure of the obligation would be the law of England—the same law which defines the liability for injury to life done on shore or in territorial waters. I think it is a proper qualification of this proposition that the obligation is only enforceable by those to whom the law of their own country has given an equivalent remedy. In order that a civil action may arise out of something done on the high seas, there must be a debtor who is put under an obligation according to the laws of his country, and creditors having a claim arising out of the same matter according to the laws of their country. If it is necessary that the laws of both countries should concur, then the claim for *solatium* must fail, because we have a right of action on the part of the pursuers but no passive liability on the part of the defenders.

There is, I think, only one answer to this suggestion which merits consideration, viz., that *solatium* is not a claim distinct from the claim of damages which is recognised by the English statute law; that it is a mere incident in the proof of damage, or as it was put, an element in the measure of damage.

It is worth considering whether this is a good plea, supposing the facts were such as to raise it—for example, if this were a case of destruction of cargo, and the law of one country prescribed as the measure of compensation the price at which the consignee could supply himself in the nearest market, while the law of the other country would give, for example, the cost price of the goods plus fair mercantile profit. Without wishing to express a definite opinion, I think that the judge trying the case supposed would take the measure of damage given by the law which he administers, which might possibly be different from that in which the parties to the cause were subject *ratione domicilii*. Measure of damages is, I think, part of the law of evidence, and as such would seem to pertain to the *lex fori*.

But I am not of opinion that *solatium* fits into this category. The claim which the Scots law accords to the relatives of the deceased is a claim of damages equivalent to the claim given by English law plus *solatium* for injury to feelings. The claim which the law of England recognises, and for which the defenders, as English owners, are bound, is only a part of the claim which the law of Scotland accords; and unless we are prepared to affirm that the part is equal to the whole, I cannot see how we can treat these as identical claims, involving a mere variation in the mode of computation. I am therefore of opinion that the claim of *solatium* must be disallowed.

LORD KINNEAR.—I am of the same opinion. The defenders in this case are not domiciled or resident in Scotland. Our jurisdiction is founded solely on the arrestment of a ship which is their property in the harbour of Glasgow, but it is admitted that this enables the courts in Scotland not only to entertain a proper action *in rem*, but also to entertain a personal action against the owners of the arrested vessel, founded on the fault of themselves or of their servants. There is no question, therefore, as to the jurisdiction; but the defenders maintain that their liability for the alleged fault must be determined by the liability of their own country to which they are subject. and not by the law of Scotland. I am of opinion, for the reasons given by your Lordships, that this plea is well founded.

It is averred, and indeed it is admitted, by the pursuers that the collision took place in the Irish Channel outside the ter-

ritorial waters of the United Kingdom. The action is therefore brought for reparation for the consequences of a delict committed outside the territory of Scotland and by persons who are not subject to the jurisdiction of the courts of this country otherwise than by reason of the arrestment of their property. I agree with your Lordships that the sound rule is that the liability of an Englishman for a wrong against another Englishman committed outside the territory of Scotland where the question is being tried must be determined according to the law of their own country. The question must be determined upon precisely the same principles and in the same way as if the defenders were foreigners in the strictest sense and to all intents and purposes. The proposition of the pursuers therefore is, that if a ship belonging to any other nation—a French or American ship — were to run down another ship on the high seas, and afterwards to come into a Scotch harbour, where she might be arrested, the liability of the foreign owners is to be determined not by the law of their own country but by the law of any port within whose jurisdiction an embargo may have been laid upon their vessel. I do not think that that can be maintained.

I think it is for the pursuers to show sufficient ground for subjecting the defenders to the law of another country than England, and I have been unable to find any authority or principle by which, in the circumstances I have supposed, we should be enabled to enforce against a foreigner reparation for loss of life which his own law did not give, although the accident which resulted in loss of life did not happen in Scotland within the territory of our jurisdiction, but on the high seas. I am unable to agree with the Lord Ordinary's observation that the question of damages belongs to the remedy, and therefore falls to be determined by the *lex fori*. The question whether, according to the law of a particular country, the death of a human being can be a ground of action appears to me to go deeper than the question whether, assuming that an action may lie, the persons injured are entitled to compensation in respect of actual damage only, or whether they are entitled to compensation also in respect of their affliction or the personal sufferings of the deceased. I do not know how far the two questions may be mixed up by the law of England, but, however that may be, the defenders' plea appears to me to afford sufficient answer to the argument I am considering, because their plea is—"In respect that by the law of England the pursuers have no title to sue, or otherwise have no claim upon the defenders for *solatium* as sued for, the defenders ought to be assoilzied." Now, I agree that that is not very accurately stated, because the objection as explained in argument does not go to title to sue, but to the denial of a right of action. For in the course of the argument of their counsel it appeared that what they meant to maintain as matter of fact as to the law of England was, that by that law death gave no cause of action except in certain specified cases, where the general rule of the common law had been displaced by an Act of Parliament. The rule that whatever belongs to the remedy is to be determined by the *lex fori* appears to me to have no application to the case of the defenders as there expressed. The rule depends upon the distinction between questions as to the constitution of obligations and questions as to the mode in which they are to be enforced. If the law of England gives the pursuers no right of reparation at all, or no right of reparation for wounded feelings, or anything else but pecuniary loss, I do not see how they can acquire other rights by any rule of our own law and practice as to the manner in which, assuming the right to be vested in them, the remedy ought to be administered. It may be that there are differences as to their mode of ascertaining damage which may belong to the remedy, and therefore to the *lex fori*, and it may turn out that there is possibly no distinction between the two systems except in the matter of remedy, and, if that is so, no doubt the *lex fori* must govern, but we cannot in the face of the defenders' pleas take for granted that that is the state of the English law.

The Lord Ordinary observes that it is admitted that the pursuers are within the category of persons entitled to claim damages in England under Lord Campbell's Act. I do not find any admission to that effect upon record, and it appears to me that a much more specific statement as to what the law of England as modified by that Act really is would be required in order to enable us to apply that statute with safety to the case of each individual pursuer—a more specific statement than we can find in any concession made either on record or in argument at the bar. For the question whether a right of action in the circumstances of the present case is given by Lord Campbell's Act to the pursuers or any of them appears to me to be just as much a question of the law of England as the question whether such a right is given by the common law. I therefore agree with your Lordships that we should recal the Lord Ordinary's interlocutor and sustain the defenders' second plea, and remit to the Lord Ordinary to proceed.

On 17th November two of the pursuers domiciled in Scotland and one domiciled in Norway presented a note, in which, after quoting from the Lord President's opinion, and bringing under his Lordship's notice the fact that certain of the pursuers were not domiciled in England or Ireland, they proceeded—"In these circumstances it humbly appears to the pursuers to be doubtful whether the judgment pronounced was intended to be applicable to the pursuers above recited or not, and they respectfully deem it their duty to bring the circumstances under your Lordship's notice in order that it may be made clear whether the judgment applies to all the pursuers, or, if not, to which of them it applies."

They accordingly craved his Lordship "to move the Court to insert in the interlocutor words restricting the judgment to the case of such of the pursuers as are of English or Irish domicile, or otherwise to define the pursuers to whom the judgment applies."

LORD PRESIDENT—It is to be regretted that this distinction as to the domicile of some of the pursuers was not pointed out to us when judgment was given, but the circumstances to which our attention has now been drawn do not, in my opinion, affect the result. I may say at once that, as your Lordships know, I had considered the question which we have now to deal with, the question, namely, of the liability of the party doing the injury where damage results from a collision on the high seas, and there is a difference between the law of the country of the party doing the injury and the law of the country of the party injured as to the liability arising from the injury. That question, as I have said, was considered by the Court, and if in the opinion I formerly delivered I did not discuss it, it was not from any doubt on the point, but because, misled by the record, I thought the question did not arise in the circumstances of this case. I may now say that I think the true view of the law, where a conflict arises in such a case between the law of the country of the person injured, and of the person doing the injury, is that which is stated in one of the articles of the Antwerp Congress of 1885, and the rule is that to found a claim there must be a concurrence between the law of the country of the injurer and the injured—that the person convened as defender cannot be made liable unless these two factors concur: first, that he is liable to the claim made against him by the laws of his own country, and in the second place, that the injured would be entitled by the laws of his country to what he claims. Now, in the present case we have only the latter of these elements, for, on the other hand, we have an English defender, and the foundation of our judgment is that an English defender cannot be found liable for *solatium* for injury done on the high seas unless by the law of England he is so liable.

LORD M'LAREN—I agree with your Lordships, and I may say indeed that it was in consequence of your Lordship having called our attention to this point at consultation that I thought it right to refer to it in my opinion, because although in the circumstances of the actual case it might not be strictly necessary to decide whether the right to recover damages depends on the concurrence of the laws of the pursuers' and the defenders' domiciles, the question appeared to me to lie at the foundation of the principle on which our judgment was based, and therefore to be a proper subject for discussion.

LORD KINNEAR was absent.

The Court sustained the second plea-in-law for the defenders, and remitted to the Lord Ordinary to proceed.

Counsel for the Pursuers — Sol.-Gen. Dickson, Q.C.—Younger. Agents—J. & J. Ross, W.S.

Counsel for the Defenders—Ure, Q.C.—Aitken. Agents—Webster, Will, & Ritchie, S.S.C.

Wednesday, November 17.

FIRST DIVISION.

[Lord Low, Ordinary.

CALEDONIAN RAILWAY COMPANY *v.* CORPORATION OF GLASGOW.

Arbitration—Arbitrator—Disqualification—Premature Application for Interdict.

C was appointed standing arbitrator by a railway company and the corporation of a town, in terms of the company's private Act of Parliament, to determine any differences that might arise between them on the subject, *inter alia*, of "any alterations, developments, or extensions of the existing or contemplated works in connection with any department administered by" the corporation.

The corporation subsequently obtained an Act of Parliament to authorise the construction by them of certain sewers and other works near the railway. C having acted as adviser to the corporation in the promotion of this Sewage Act, the company sought to interdict him from acting as arbitrator under their Act, on the ground that he was necessarily disqualified by his relations with the corporation from determining any question that might arise thereunder in connection with the works proposed, though not yet begun, under the Sewage Act.

Interdict *refused*, on the ground that the application was premature, and that though the arbitrator would be disqualified from acting in any question under the company's Act which involved the new sewage works, it was not certain that any such question would ever arise.

Statute — Construction — Glasgow Central Railway Act 1888 (51 *and* 52 *Vict. cap. cxciv*), *sec.* 41 (*P*)—*Glasgow Corporation Sewage Act* 1896 (59 *and* 60 *Vict. cap. ccxxxiv*), *sec.* 11 (6) *and* (7).

Held that the jurisdiction conferred on a standing arbitrator by section 41 (P) of the Glasgow Central Railway Act 1888 is not excluded by section 11 (7) of the Glasgow Corporation Sewage Act 1896

This was a note of suspension and interdict presented by the Caledonian Railway Company against the Corporation of Glasgow and William Robertson Copland, civil engineer, to have Mr Copland interdicted from acting as arbitrator between the complainers and the Corporation under the Glasgow Central Railway Act 1888 (51 and 52 Vict. cap. cxciv).