Thus in *Chambers* the workman drowned was not employed in the dredging work for which machinery was used, but merely in removing material brought up by the dredger.

I therefore agree with your Lordship that the decision of the Sheriff-Substitute is right.

LORD KINNEAR concurred.

The Court answered the questions in the case in the affirmative.

Counsel for the Appellant — Solicitor-General (Dickson, Q.C.)—Glegg. Agents—Macpherson & Mackay, W.S.

Counsel for the Respondent—Baxter—Guy. Agents — Cunningham & Lawson, S.S.C.

Wednesday, January 17.

FIRST DIVISION.

[Sheriff of Lanarkshire.

WILSON *v.* GILCHRIST.

Interdict—Interdict on Caution—Wrongous Use of Interdict—Reparation.

When an interdict is granted on caution it is not operative until caution is found, and therefore a person who has sustained loss by obedience to an interdict on which caution never was found, has no relevant claim of damages against the person at whose instance the interdict was granted.

A landlord obtained interim interdict, on condition of finding caution, against his tenant ploughing certain lands. He failed to find caution, and ultimately abandoned the interdict. The tenant brought an action of damages for the loss sustained by him through being prevented from ploughing the land. *Held* that the action was irrelevant, as the interdict had never become effectual, and the tenant had been free to plough if he chose.

James Gilchrist, proprietor of the lands of Thornice, near Braidwood, Lanarkshire, applied in the Sheriff Court of Lanarkshire for interdict against William Thomas Wilson, his tenant, to prevent him from ploughing or breaking up the said lands. On 28th March 1899 interim interdict as craved was granted, with this clause, "on the condition that the petitioner find caution for any consequent damage to the respondent." Gilchrist never found caution, and on 3rd April abandoned the interdict.

Wilson brought an action in the Sheriff Court of Lanarkshire for £63, 4s., and averred that the interdict had been obtained wrongously, illegally, and unwarrantably, and had prevented him from having the beneficial use of the lands let to him, with the result that he had suffered damages to that amount.

He pleaded—"(1) The pursuer having suffered loss and damage through the interdict libelled or wrongfully obtained by the defender is entitled to compensation from the defender for the loss so sustained."

The defender pleaded, *inter alia*—"(4) The interdict complained of never having become effectual to prevent the pursuer from ploughing, he can have suffered no loss or damage in consequence, and the defender is entitled to absolvitor with expenses."

On 11th July 1899 the acting Sheriff-Substitute (MITCHELL) pronounced the following interlocutor:—"On the motion of the pursuer and of consent in respect there is a contingency between this action and the one presently pending in this Court between the same parties, No. A 16/1899, Remits this process thereto for conjunction therewith."

On appeal the Sheriff (BERRY) pronounced, on 4th November 1899, the following interlocutor:—"In respect of an appeal in the action A 16/1899, submitting the above interlocutor to review, and having heard parties' procurators and considered the case, recals the above interlocutor, closes the record, and having heard parties' procurators thereon, finds that it was a condition-precedent of the interim interdict attaching that caution should be found by the pursuer in that action: Finds that caution was not found, and that therefore the interdict never applied: Finds therefore that the pursuer could not be damaged by the interdict, and that the action is irrelevant, therefore dismisses the same: Finds the pursuer liable to the defender in expenses," &c.

Note.—"The interim interdict complained of was granted in these terms—'Grants interim interdict as craved, but on the condition that the petitioner find caution for any consequent damage to the respondent.' No caution was found, therefore the interdict did not apply."

The pursuer appealed to the Court of Session, and argued — The pursuer was bound to assume that caution would be found. He could not be expected to inquire every day to see whether the interdict had become operative. The person who wrongfully obtained an interdict was liable for all damage sustained by the party interdicted—*Kennedy* v. *Police Commissioners of Fort-William*, December 12, 1877, 5 R. 302. It had been decided that obtaining an illegal warrant of ejectment was a relevant ground of damages, although the warrant was never executed — *Bisset* v. *Whitson*, July 27, 1842, 5 D. 5. The present case was on the same principle.

Counsel for the pursuer was not called upon.

LORD PRESIDENT—In this action the pursuer claims damages from the defender on the ground that the defender prevented him by interdict from ploughing certain land which he held on lease from the defender, and the question is, whether the defender really obtained an effective interdict against the pursuer ploughing the land. The Sheriff-Substitute's interlocutor is in the following terms—"Grants interim interdict as craved, but on the condition that

the petitioner find caution for any consequent damage to the respondent." The interdict granted was conditional, not absolute; if and when the defender found caution, the interdict would attach, but unless and until caution was found, and if it never was found, there was no interdict. As caution was not found, there was no interdict. The pursuer was entitled to plough until caution was found, and if he stopped ploughing when caution had not been found, this was a purely voluntary act on his part which could not entitle him to damages. I therefore think that the judgment of the Sheriff should be affirmed.

LORD ADAM—I have always understood, in the course of a somewhat long experience, that when interdict is granted on caution, it is a condition of the interdict being effective that caution should first be found, and if it is not found within a reasonable time the case is dismissed. I have no doubt that the rule is the same in the Sheriff Courts. In this case, accordingly, I am of opinion that there never was an interdict to prevent the pursuer ploughing. There could not possibly have been a complaint for breach of interdict if he had gone on ploughing. I therefore agree with your Lordship.

LORD KINNEAR — I am quite of the same opinion. The only question seems to be, whether an interlocutor by which a sheriff grants interdict "on condition" that caution shall be found, means that the sheriff grants interdict whether caution is found or not. I am very clearly of opinion that the interlocutor means exactly what it says; and that its legal effect is entirely in accordance with the plain meaning of the words. The defender, therefore, not having satisfied the condition on which the Sheriff was prepared to grant interdict, did not in fact obtain an interdict at all.

LORD M'LAREN was absent

The Court refused the appeal.

Counsel for the Pursuer—Watt. Agent—A. C. D. Vert, S.S.C.

Counsel for the Defender—Lees. Agents—W. & F. C. MacIvor, S.S.C.

Thursday, January 18.

FIRST DIVISION.

[Lord, Low Ordinary.

CALLENDER'S CABLE AND CONSTRUCTION COMPANY, LIMITED *v.* CORPORATION OF GLASGOW.

Process —Declarator — Competency—Declarator that Article Satisfies Requirements of Bye-law.

The Glasgow Police Commissioners made a bye-law to the effect that the walls of every building should have a damp-course, and that such damp-course should be "of durable material, impervious to moisture." The manufacturers of a damp-course known as Callender's Pure Bitumen Damp Course, brought an action against the Corporation of Glasgow (in whom the powers of the Glasgow Police Commissioners are now vested), and their Master of Works, concluding for declarator that their damp-course was "in conformity with and satisfied the provisions of" the bye-law. They averred that the Master of Works had led certain specified builders to understand that the said damp course was not in conformity with the bye-laws and that its use would not meet with his approval, with the result that Glasgow builders declined to use it. *Held* that the action was incompetent.

By the Glasgow Building Regulation Act 1892, section 72, it is provided that the Commissioners—that is, the Glasgow Police Commissioners, now, by section 4 of the Glasgow Corporation and Police Act 1895, the Corporation of the City of Glasgow—may from time to time make bye-laws with respect to, *inter alia*, the following matters: . . . "*Third*, the materials to be used in the construction of buildings, the protection of columns, beams, and other supports of buildings, projections over streets and courts, recesses in walls, openings in party and cross walls, and the erection and removal of hoardings and platforms.

Among the bye-laws which were on the 21st of November 1892 made by the said Commissioners under and by virtue of the above-mentioned section of the said Glasgow Building Regulations Act, and which were on the 18th of April 1893 confirmed by the Secretary of State for Scotland, the 21st provides as follows, viz. — "Every wall, dwarf wall, and partition wall of a building, if built of stone, brick, or concrete, and resting on the ground, shall have a damp course throughout its entire thickness, and such damp-course shall be of durable material impervious to moisture. The damp-course shall be beneath the level of the underside of the joists of the lowest floor, and not under the level of the surface of the ground, and such damp-course may be of sheet lead weighing four pounds to the square foot, or rock asphalt, or Caithness flags square cut and laid in cement. The damp-course in dwarf walls may be of large squared slates laid in cement. Where necessary, the damp course shall be stepped to suit different levels in the lowest floor."

The Callender's Cable and Construction Company, Limited, proprietors of a damp-course known as Callender's Pure Bitumen Damp Course, brought an action of declarator against the Corporation of Glasgow and John Whyte, master of works there, to have it declared that a damp-course, known as Callender's Pure Bitumen Damp Course, of which the pursuers are the manufacturers, is a damp-course which is in conformity with, and which satisfies the provisions of bye-law 21, made on the 21st day of November 1892, under and in virtue of