Lord Ordinary. His Lordship says the case is to be distinguished from cases of the taking of land under the Lands Clauses Act, "where the notice to treat makes a contract binding on both parties." Under the Waterworks Act, says his Lordship, "the position of parties is quite different. The notice is merely an inhibitory measure intended to stop the working," but it is an inhibitory measure which makes a very serious invasion of the proprietary rights of the mineral owner, and which the Water Trustees cannot take, and do not pretend to take, without binding themselves to pay compensation. That is distinctly set out in their notice, by the terms of which it is as plain as words can make it that the payment of compensation is the consideration offered in terms of the statute for the stoppage of the mineral working, and therefore the serving of the notice makes a statutory contract just as binding as that from which the Lord Ordinary thinks it is to be distinguished. It is not a voluntary contract on the part of the mineral owners, because the Act of Parliament makes an offer on their behalf from which they cannot withdraw if the undertakers accept it. But it is entirely voluntary on the part of the Water Trustees, and having taken the benefit of it they cannot now turn round and avoid it on any such ground as that suggested. At the same time it is right to observe that the case was presented to the Lord Ordinary under a different aspect from that in which we have to consider it, and it is possible that his Lordship might not have come to the same conclusion if he had not supposed that the pursuers were to be prohibited by interdict from working any mineral within a specific area which is practically identical with the area protected by the Waterworks Clauses Act.

For these reasons, I am of opinion the defenders are bound to pay compensation, and that it is irrelevant to allege that the amount awarded is excessive, because they are bound by the contract of reference to submit to the arbiter's decision, which the Court has no jurisdiction to review.

The LORD PRESIDENT, LORD ADAM, and LORD M'LAREN concurred.

The Court pronounced this interlocutor—

"Recal the said interlocutor: Decern for payment by the defenders to the pursuers the Clippens Oil Company, Limited, of (1) the sum of £8079 under the reference first mentioned in the summons, with interest thereon at the rate of 5 per centum per annum from 11th November 1898, together with the sum of £564, 10s. 11d., the taxed amount of the expenses in said reference; and (2) the sum of £2250 under the reference second mentioned in the summons, with interest on said sum at the like rate from the said date, together with the sum of £533, 4s. 5d., the taxed amount of the expenses in said second reference: Further find the pursuers entitled to the expenses of this action," &c.

Counsel for the Pursuers and Reclaimers—Sol.-Gen. Dickson, K.C.—T. B. Morison. Agent—J. Gordon Mason, S.S.C.

Counsel for the Defenders and Respondents—Dean of Faculty Asher, K.C.—Cooper. Agents—Millar, Robson, & M'Lean, W.S.

Friday, February 22.

SECOND DIVISION.

CAIRNS *v.* CAIRNS' TRUSTEES.

Succession — Casus improvisus — Advance for Maintenance of Beneficiary—Direction to Act as Considered Best for Adopted Daughter—Repudiation by Wife of Testamentary Provisions — Conditional Institution—Vesting subject to Defeasance —Acceleration of Period of Payment.

A testator directed his trustees to pay his widow the whole revenue of the residue of his estate during her life, subject to restriction to an annuity of £100 in the event of her second marriage, and "on the death of my said wife" to apply the residue to and for behoof of C, his adopted daughter, and to expend a part or the whole of the annual income, or even part of the capital if they thought fit, in the maintenance, education, and upbringing of C until she should attain the age of twenty-one or be married, and that on either of these events happening the trustees should, as they considered it most for the advantage of C., either denude of the trust and make over the whole estate to her, or in the event of her marriage settle the same or part thereof on trustees for C in liferent and her children in fee, paying over the remainder to her absolutely, or, whether married or unmarried, allow her a liferent and postpone payment of the fee and retain it in their hands for such length of time as they deemed best. It was declared that C on attaining twenty-one years of age or being married should have power to test on the fee of the residue, if settled on her issue, then among such issue in such proportions as she might fix, and if not settled on issue, or failing issue, in favour of such persons as she might name by any writing under her hand. The truster declared it to be his wish that the trustees should act towards C as if she were his own child, and as they should consider best for her comfort and advancement in life. In the event of C dying before attaining twenty-one years or being married, or of her surviving that age or event but dying before receiving payment of the residue, and having failed to test thereon, the truster directed his trustees to pay the residue, or what remained of it, to and among the then surviving children *per stirpes* of all his brothers and sisters,

the issue of deceased children taking the share which their parent would have taken on survivance.

The truster was survived by his wife and by C. who was in minority. The widow rejected the provisions in her favour in the settlement, and elected to take her legal rights. By agreement with C the truster's widow agreed to maintain and educate C till she should attain the age of twenty-one, C being taken bound when she attained that age to borrow on the security of her interest in the trust estate the amount so expended on her maintanance and education, and to pay the same to the testator's widow.

On C attaining twenty-one years of age she asked the trustees (1) to pay her a part of the capital of the residue, so as to enable her without borrowing to pay the truster's widow the amount she was due to her for education and maintenance; and (2) to make her for the future an allowance out of the income of the estate during the survivance of the truster's widow.

Held that the trustees were entitled under the deed to make the payments desired.

Opinion (*per* Lord Low) that when C attained majority the fee of the residue vested in her, subject to defeasance or divestiture if the trustees should, and in so far as they might, settle the fee upon her issue in the event of her marriage.

A special case for the opinion and judgment of the Court was presented by (1) Miss Jessie Cairns, the adopted daughter of Robert Webster Cairns, sometime wine and spirit merchant in Glasgow; (2) Mrs Agnes Menzies or Cairns, widow of Robert Webster Cairns; and (3) the trustees and executors of Mr Cairns, under his trust-disposition and settlement, dated 18th February 1889.

The following facts raising the question to be decided by the Court were set forth in the case:—Mr Cairns died on 14th September 1894, leaving the above-mentioned trust-disposition and settlement, by which he conveyed his whole estate, heritable and moveable, to the third parties, in trust for the purposes therein written. He also appointed them his executors and tutors and curators to such of the beneficiaries as might be in pupillarity or minority on and after his death.

By the sixth purpose of his trust-disposition and settlement Mr Cairns directed his trustees to convert his whole estate into cash, and to pay to the second party the whole annual revenue of the residue, and that during all the days and years of her life after his death so long as she remained his widow, with power to the trustees, if in their discretion they should think the annual income of the estate insufficient for the proper maintenance of his wife, to encroach upon capital; and under declaration that in the event of the second party entering into a second marriage the provision in her favour of the annual income of the estate should *ipso facto* be restricted to an annuity of £100 per annum. The provisions in favour of the second party were to be accepted by her as in full of all claims for terce or *jus relictæ* competent to her through Mr Cairns' decease.

The trust-disposition and settlement thereafter proceeded in the following terms:—"(Seventhly) On the death of my said wife I direct my trustees to hold and apply the residue of my means and estate to and for behoof of my adopted child Jessie Cairns, at present residing with me, and to expend such part of the annual income, or the whole thereof, or even a part of the capital of the said residue if they think fit, towards the suitable maintenance, education, and upbringing of the said Jessie Cairns (it being my desire that she should receive a liberal education) until she attain the age of twenty-one or be married, whichever of these events shall first happen, and on either of these events happening my trustees shall, if they consider it most for the advantage of the said Jessie Cairns, denude themselves of the trust and make over the whole estate under their charge to her for her own absolute use, or they may in the event of her marriage settle the same or a part thereof upon trustees for her, for her liferent alimentary use and for behoof of her issue in fee, paying over the remainder to her absolutely; or whether married or unmarried they may allow her only a liferent and withhold or postpone payment of the fee and retain the same or part thereof in their hands for such length of time as they may deem best: Declaring that the said Jessie Cairns on attaining twenty-one years of age or being married shall have full power and faculty, which I hereby confer upon her, to test upon the fee of the said residue, if settled upon her issue, then among such issue in such proportions as she may fix, and if not settled upon issue, or failing issue, then in favour of such person or persons as she may name by any writing under her hand: Declaring that it is my wish that my trustees should act towards my said adopted daughter as if she were my own child and as they consider will be best at all times for her moral good and comfort and advancement in life: And (Lastly) in the event of the decease of the said Jessie Cairns before attaining twenty-one years of age or being married, or of her surviving that age or event but dying before receiving payment of the said residue, and having failed to test thereon, I direct my trustees to pay and convey the said residue, or whatever portion may then remain, equally to and among the then surviving children *per stirpes* of all my brothers and sisters—the issue of any child who may have deceased leaving issue being always entitled equally among them to the share which their parent would have taken on survivance."

Mr Cairns was survived by his wife Mrs Agnes Menzies or Cairns, the second party, and by Miss Jessie Cairns, the first party. He left personal estate in Scotland valued at £9971, 18s. 6d., and heritable estate in

Scotland valued at £12,122, 1s. 8d. The total nett value of his estate, heritable and moveable, after deduction of debts, amounted to £22,028, 13s. 2d. The third parties accepted office as trustees and executors. The second party rejected the provisions in her favour in her husband's settlement, electing to claim her legal rights out of Mr Cairns' estate. On granting a discharge to the trustees she was accordingly paid a sum of £4289, 12s. 11d. in name of *jus relictæ*, and thereafter she was regularly paid and continued to draw her terce out of the heritage.

By Mrs Cairns' action the sixth purpose of the trust-disposition and settlement was superseded, and the only purposes which remained to be fulfilled were the seventh and last purposes above quoted. The second parties held the balance of the estate in their hands (which as at 14th September 1900 amounted to £17,292, 4s. 10d. or thereby) for implement of these purposes.

At the date of Mr Cairns' death the first party was in minority. Upon Mrs Cairns' election of her legal rights an agreement was entered into, dated 9th April 1895, between her and the first party. By said agreement Mrs Cairns agreed to maintain and educate the first party until she should attain the age of twenty-one years, and for such time thereafter as the said parties might agree upon, the first party being taken bound to pay to Mrs Cairns for such maintenance and education certain sums, to secure the payment of which an insurance upon her life was to be effected. The first party was further taken bound, when she should attain the age of twenty-one years, to borrow on the security of her interest on the estate of Mr Cairns such an amount as would cover the principal sums due by her to Mrs Cairns with interest thereon, and to pay the same to Mrs Cairns, whereupon the latter should be bound to convey to Miss Cairns her whole interest in said policy of insurance. By minute annexed to said agreement, dated 30th April 1895, provision was made for the application of any surplus remaining out of the proceeds of the said policy after payment of the sums due to Mrs Cairns in the event of Miss Cairns dying before payment of said sums otherwise.

The ninth article of the special case was as follows:—"(9) The first party was duly maintained and educated in terms of said agreement by Mrs Cairns from 14th September 1894 to 14th September 1900, and for said education and maintenance she is due to Mrs Cairns the sum of £1227, 10s. 7d. (including interest), and sums expended in maintaining and keeping in force a policy over her life for £1500 effected with the English and Scottish Law Life Association and relative interest."

The special case further stated that the first party had now attained the age of twenty-one years and was still unmarried; that as she found it would be seriously to her disadvantage to borrow the sums necessary to discharge her indebtedness to Mrs Cairns, and as she had no independent means of support, she was desirous of obtaining payment of at least a part of the sums falling to her from Mr Cairns' estate; that she had already executed a testament disposing of the estate in the event of her decease before she should have received payment of it; that the trustees believed it to be desirable to make over to the first party in fee a portion of the estate held by them, and were willing, if they had power, to pay her out of the estate under their charge such a sum as would enable her to pay off her indebtedness to the second party, and also to allow the first party a sum for her future maintenance out of the revenue of the residue; and that the second party was quite agreeable, for any interest she might have, that the first party should have part of the capital made over to her, and also a sum given to her for future maintenance, and was willing to renounce her rights so far as might be necessary to allow of this being done.

The question of law was—"Are the third parties entitled or bound (1) to pay to the first party a part of the residue for the purposes specified in article 9 hereof, and (2) to make her for the future or termly an allowance out of the income of the estate during the survivance of the truster's widow?"

Argued for the first party—The trustees were bound to make the payments desired. The estate had vested in her. The children of the testator's brothers and sisters were not conditional institutes under the deed. The only object for which payment was postponed was to provide for the payment of the widow's liferent. The widow having chosen to take her legal rights, this object had failed, and the first party being the only person with a real interest in the estate was entitled to have the period of payment accelerated—*Muirhead* v. *Muirhead*, May 12, 1890, 17 R. (H.L.) 45; *Robertson* v. *Walker*, November 24, 1846, 9 D. 152. Even if the estate was not held to have vested in her, the trustees were entitled under the terms of the deed, if they thought proper, to advance part of the capital and make her an allowance, and if the Court found the trustees entitled to make these payments they would be giving effect to the plain intention of the testator.

Argued for the third parties—They considered it doubtful whether they were entitled to make payment to the first party of any portion of the estate till the death of the second party. If the Court held that they had the power they were quite willing to pay the first party a part of the residue and also a termly allowance. If the Court held that they had not the power to make these payments it was their duty to accumulate the income till the loss in the capital occasioned by Mrs Cairns having claimed her legal rights had been wiped out—*Russell's Trustees* v. *Gardiner*, June 18, 1886, 13 R. 989.

At advising—

LORD YOUNG—The question we have to deal with is as to whether the trustees are entitled to pay out of the trust estate under their charge a sum of £1500 for the purpose of paying up a debt said to be due by the adopted daughter of the truster to his widow for the expense of her education and maintenance till she attained twenty-one years, and also as to whether they have power to pay to the adopted daughter in future a termly allowance out of the income of the estate.

The trustees state that they are willing to make both these payments. I understand that to mean that in their judgment it is right and proper that they should, in exercise of the discretion conferred on them by the deed, and in discharge of their duty as trustees, make the payments in question.

A good deal was said during the argument on the question whether under this ill-framed deed vesting of the testamentary estate in the adopted daughter has not taken place. I think that is an important question, but it is not raised in this case. If we should be of opinion that the powers of the trustees to make the payments in question depended on whether the fee had vested or not, then in order to determine the question of power we would need to consider whether or not vesting had taken place. But that might lead to further discussion, for if we determined that the fee had vested, another question would arise which is not put in this case, viz., whether, the adopted daughter being now twenty-one years of age, the trustees could refuse to hand over the whole estate to her. But I think that the only question presented to us in this case is, whether it is in the power of the trustees to make the advance out of capital and the allowance out of revenue to the adopted daughter, and I am of opinion that, irrespective altogether of the question of vesting, it is in the power of the trustees to make these payments, they informing us that they believe that that is a proper thing to do. I found this opinion on the expression in the deed—"Declaring that it is my wish that my trustees should act towards my adopted daughter as if she were my own child, and as they consider will be best for her moral good and comfort and advancement in life." I do not read this provision as inapplicable and inoperative so long as the widow lives. I do not read it as having effect only on the death of the widow. Holding that it would have come into operation during the widow's lifetime even if she had abided by the deed, and that it has come more especially into operation now that she has betaken herself to her legal rights, I consider that it confers powers of an independent character on the trustees to act according to their discretion, and make payments to the adopted daughter which they consider beneficial for her interests. Agreeing as I do that what they desire to do is the right and proper thing, I think it is in their power to make the payments in question.

LORD TRAYNER—It is not necessary, and indeed we are not specifically asked to determine whether any right to the residue of Mr Cairns' estate has already vested in the first party to this case, for the question put before us may be answered upon other and to my mind satisfactory grounds. The main purposes of Mr Cairns' settlement were two—first, to provide for his widow by leaving her the liferent of his estate, and second, to provide for the first party "as if she were his own child," by leaving to her the estate so liferented under certain conditions. These conditions were evidently dictated by a desire to protect the first party's interest in so far as the foresight of the testator could provide for this.

The trustees were directed to hold the estate during the lifetime of the testator's wife, and on her death to communicate the benefit of the testator's bounty to the first party in the manner and under the restrictions enumerated in the settlement. The testator's wife is still alive, but is taking no benefit under the settlement, as she elected to take her legal rights rather than the conventional provisions there conceived in her favour. It appears to me that the existence of the testator's widow does not *per se* hinder the trustees from exercising in favour of the first party any discretion committed to them by the testator as to the disposal of the fee of his estate. The postponement of the period at which the first party should be entitled to the enjoyment of any beneficial interest under the settlement was obviously only for the purpose of protecting the widow's liferent, and that in the circumstances does not now call for any protection. I therefore read the settlement as if it had provided that "on the expiry of the liferent" the trustees might proceed to deal with the fee of the estate in the interest and for the benefit of the first party as there directed. The discretion conferred on the trustees is of a very comprehensive character, but for the purposes of the present decision it is enough to notice that (the liferent being out of the way) the trustees are authorised, *inter alia*, if they think fit, on the first party attaining majority or being married, "and on either of these events happening," to make over to her the whole estate or part thereof. The first party has attained majority, and the trustees inform us that they are willing, and in the interest of the first party think it right, to pay to her the sum mentioned in article 9 of the case as well as to make her a yearly allowance out of the income of the estate which they are meantime retaining in their hands. To do so is, I think, entirely within the power of the trustees, and I am content to answer the questions put to us by affirming that they are entitled to make both the payment and the yearly allowance as proposed.

LORD LOW—I agree with your Lordships that we should find that the trustees are entitled to make the proposed payments to the first party, but I confess that I have some difficulty, in view of the opinions delivered in the House of Lords in the

case of *Muirhead's Trustees*, as to the grounds upon which the judgment should proceed.

In *Muirhead's Trustees* it was laid down that if, in such a case as that with which we are now dealing, the widow elects to take her legal rights instead of the liferent provided to her by the settlement, the Court will not be justified in authorising an acceleration of the period of payment (1) unless the only object for which the period of payment was postponed until the widow's death was to secure her liferent, and (2) unless the party seeking payment has taken a vested right, or all the parties interested in the residue consent to the payment being made.

I have no doubt that the first of these conditions is present here, because I think that it is plain that the only reason for postponing the period of payment was to secure the liferent. The question remains, whether the second condition, in either of its alternatives, also exists.

If the only person interested in the fee of the estate is the first party there is no difficulty, but there is a gift-over to the children of the truster's brothers and sisters. It is that fact which creates a doubt in my mind in regard to the proposed ground of judgment.

If the children of the brothers and sisters are conditional institutes, then there can be no vesting in anyone until the death of the second party, because until that event it cannot be ascertained who, in terms of the settlement, is to take the estate. Further, if these children are conditional institutes, they are, in my judgment, entitled to say that the fee of the estate, which may turn out to belong to them, shall not be diminished by any payments out of capital, and that the income shall be applied in restoring to the estate the amount which has already been withdrawn, under the operation of the well established doctrine of equitable compensation.

Now, the children of the truster's brothers and sisters are not parties to this case, nor do they consent to the proposed payments. And that would, in my opinion, be a fatal objection to the course proposed if they are truly conditional institutes.

I do not, however, think that they are conditional institutes in the event, which has happened, of the first party attaining majority. The settlement provides in the first place for the event of the second party dying while the first party is in minority or unmarried. In that case the trustees are directed to hold the residue for her behoof and to expend the revenue, and if necessary part of the capital, for her maintenance and education, and then the trustees are directed to pay the residue to the children of the truster's brothers and sisters "in the event of the decease of the said Jessie Cairns before attaining 21 years of age or being married." That I think is a proper conditional institution, and therefore if the first party had not attained majority, I do not think that it would have been competent to authorise the trustees to make the proposed payments to her.

But in the event of the first party attaining majority or being married the trustees were empowered either (1) to denude of the trust and make over the whole residue to her, or (2) in the event of her marriage, to settle the residue or any part thereof upon her for her liferent alimentary use, and her issue in fee, or (3) to withhold payment of the fee for such time as they deemed best and allow her a liferent only. In any case power to test upon the residue was given to the first party—an absolute power in the event of the trustees not settling the fee upon her issue, and a power of apportionment if and in so far as the fee was settled upon her issue.

In the case of the first party attaining majority or being married, the trustees were directed, in the event of her decease "before receiving payment of said residue, and having failed to test thereon," to pay the residue to the children of the truster's brothers and sisters.

The right there given to the children of the truster's brothers and sisters is therefore defeasible at the will either of the trustees or of the first party. They are only given right to the residue if the trustees elect to retain it in their own hands and if the first party dies intestate. I do not think that that is a right of conditional institution. It appears to me to be a simple destination intended to take effect only if the first party dies without having altered it.

If that view is sound, then it removes the barrier which a conditional institution of the children of the truster's brothers and sisters would, in my opinion, have presented to the proposed payments.

I think myself that when the first party attained majority the fee of the residue vested in her, subject to defeasance or divestiture if and in so far as the trustees might settle the fee upon her issue in the event of her marriage.

Apart, however, from the question of vesting, I think that the fact that the children of the truster's brothers and sisters are not, in the event of the first party attaining majority, conditional institutes, distinguishes this case from that of *Muirhead's Trustees* and the class of cases which is there dealt with, and makes it plain that after providing for his widow the first party was the person whom the truster desired to benefit.

The settlement is badly drawn. The only event in terms provided for is the death of the widow while the first party was still in minority and unmarried. Of course there were many other events which ought to have been contemplated and provided for, notably the event of the second party marrying a second time, when her liferent would have come to an end and she would only have received an annuity of £100. No provision, however, is made for the disposal of the surplus capital and income in that event. Again, no provision is made for the maintenance of the first party during the subsistence of the liferent, or in the event, which has happened, of the second party taking her legal rights. The settlement, therefore, is open to construction, and the

Court must deal with cases which are not provided for in accordance with what appears to be the intention of the testator, as that may be gathered from the provisions which he has actually made. In the case which has occurred I agree with your Lordships for the reasons which you have stated, that in authorising the proposed payments we shall act in accordance with the truster's instructions.

The LORD JUSTICE-CLERK and LORD MONCREIFF were absent.

The Court found and declared in answer to the question put in the special case that the third parties thereto were entitled to pay to the first party a part of the residue of Mr Cairns' estate for the purposes specified in article 9 of the case, and also to make payment to the first party for the future or termly of an allowance out of the income of the estate during the survivance of the second party.

Counsel for the First Party—Salvesen, K.C.—Christie. Agents—Simpson & Marwick, W.S.

Counsel for the Second and Third Parties—Dundas, K.C.—Clyde. Agents—Smith & Watt, W.S.

Tuesday, February 19.

FIRST DIVISION.

[Lord Low, Ordinary.

PYPER *v.* INGRAM.

Fishings—Herring Fishery Acts—Trawling—Seizure of Nets before Conviction—Reparation—Privilege—Public Official—Orders of Superior—Malice and Want of Probable Cause—Herring Fishery (Scotland) Act 1889 (52 *and* 53 *Vict. cap.* 23), *sec.* 6 (1)—*Herring Fishery (Scotland) Act Amendment Act* 1890 (53 *Vict. cap.* 10), *sec.* 3.

The captain of a Government vessel, employed under the Fishery Board in the prevention of illegal trawling, informed the Board that he had detected a trawler at work within the prohibited limits. The Board instructed A, a fishery officer in Aberdeen, to seize the nets of the trawler in question on her arrival at that port, and A accordingly effected the seizure. A prosecution was instituted, but the charge was ultimately withdrawn. The owner of the trawler brought an action against A, concluding for damages for injury caused to the nets in consequence of the seizure, and for the loss of a day's trawling owing to the want of them. He did not aver malice or want of probable cause. It was held by the Lord Ordinary, after a proof before answer, and acquiesced in, that the trawler had not been proved to have been fishing within the prohibited limits on the occasion on which she was sighted by the cruiser. *Held* (1) (*affirming* judgment of Lord Low, Ordinary, but on different grounds) that section 3 of the Herring Fishery (Scotland) Act Amendment Act 1890 (which is substituted for sub-section 3 of section 6 of the Herring Fishery (Scotland) Act 1889) authorised the seizure of a trawler's nets before a conviction for illegal trawling had been obtained against him; and (2) (*reversing* judgment of Lord Low) that malice and want of probable cause being neither averred nor proved against A, he was not liable, and that he was entitled to absolvitor.

The Herring Fishery (Scotland) Act 1889 (52 and 53 Vict. cap. 23) enacts (section 6 (1))—"It shall not be lawful to use the method of fishing known as beam-trawling or other trawling within three miles of low-water mark of any part of the coast of Scotland." The Herring Fishery (Scotland) Act Amendment Act 1890 enacts (section 3)—"The third sub-section of the sixth section of the Herring Fishery (Scotland) Act 1889 is hereby repealed, and in place thereof the following provision shall have effect—Any person who uses any method of fishing in contravention of the sixth section of the Herring Fishery (Scotland) Act 1889, or of any bye-law of the Fishery Board duly confirmed, shall be liable, on conviction under the Summary Jurisdiction (Scotland) Acts, to a fine not exceeding one hundred pounds . . . and every net set, or attempted to be set, in contravention of this section shall be forfeited, and may be seized and destroyed, or otherwise disposed of by any superintendent of the Herring Fishery or other officer employed in the execution of the Herring Fishery (Scotland) Acts."

On 23rd November 1898 the commander of the cruiser "Brenda," employed by the Fishery Board for Scotland in the detection of illegal trawling, intimated to the Fishery Board that he had detected the "North Star" trawling within the three-mile limit. On 25th November the following telegram was received from the Board by James Ingram, Fishery Officer, 7 Crown Terrace, Aberdeen—"'North Star' A 393, detected trawling in territorial waters by 'Brenda.' Please to take steps to seize and store port trawling gear on arrival of trawler." In obedience to this telegram Ingram took possession of the nets and gear on the arrival of the trawler at Aberdeen.

On 2nd December John Lyon, captain of the "North Star," was served with a complaint under the Herring Fishery Acts, charging him with illegal trawling on the occasion in question. This charge was ultimately withdrawn.

William Pyper, owner of the "North Star," brought an action against Ingram, concluding for payment of £48, 19s. 10d. as damages (1) for injury done to the nets in consequence of the seizure, and (2) for the loss of a day's trawling owing to the want of them. He averred that the seizure was made wrongfully, illegally, and unwarrantably, and that in consequence thereof the nets