

quences, for the mere production of bygone cheques would then enforce on all to whom they were given, the obligation to prove that they did not get the money on loan. I am accordingly of opinion that the judgment appealed from is right, and should be affirmed.

LORD M'LAREN, LORD KINNEAR, and LORD PEARSON concurred.

The Court affirmed the interlocutor of the Sheriff.

Counsel for Pursuer (Appellant)—Constable, K.C.—James Macdonald. Agents—Clark & Macdonald, S.S.C.

Counsel for Defender (Respondent)—Graham Stewart, K.C.—R. S. Horne. Agents—Davidson & Syme, W.S.

Saturday, January 23.

#### FIRST DIVISION.

[Lord Salvesen, Ordinary.]

#### KERR v. THE SCREW COLLIER COMPANY, LIMITED (OWNERS OF THE "PRUDHOE CASTLE").

*Ship—Collision at Sea—Merchant Shipping Act 1894 (57 and 58 Vict. cap. 60), sec. 48—Regulations for Preventing Collisions at Sea, Article 25—"Narrow Channel"—Firth of Forth.*

The Regulations of 1897 for Preventing Collisions at Sea provide—article 25—"In narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel."

Held that the Forth from the Forth Bridge upwards is a narrow channel in the sense of article 25.

The Regulations of 1897 for Preventing Collisions at Sea, article 25, is quoted in the rubric.

Isabella Webster or Kerr, widow of the deceased George Kerr, who was the master of the steamship "Ruby" of Glasgow, for herself and as tutrix and administratrix-in-law for three pupil children of herself and of the said George Kerr, raised an action against the Screw Collier Company, Limited, and others, registered owners of the steamship "Prudhoe Castle" of North Shields, concluding for damages for the loss they had sustained through the death of the said George Kerr. The case is reported only on the question as to the proper navigation for steamships—in view of article 25 of the Regulations for Preventing Collisions at Sea—in the Firth of Forth west of the Forth Bridge.

On or about the 9th day of October 1905 the "Ruby" left Middlesborough with a cargo of pig iron on board, bound for Grangemouth, and on the following morning, while in the vicinity of the Forth Bridge, between the Beamer Light and the

Dodds Buoy, she collided with the steamship "Prudhoe Castle" belonging to the defenders. As the result of this collision the "Ruby" sank almost immediately, the master and six of the crew being drowned.

The pursuer, *inter alia*, averred—" (Cond. 5) The death of the said George Kerr was caused through the fault of the defenders, or those for whom they are responsible, owing to their faulty navigation. In particular, the 'Prudhoe Castle,' in breach of the Regulations for the Prevention of Collisions at Sea, and especially article 25 . . . and of the rules of good seamanship . . . the Firth of Forth west of the Forth Bridge, and, in particular, at and near the place of said collision being a narrow channel, failed to keep to that side of the fairway or mid-channel which lay on her starboard side. . . ."

On 28th February 1908 the Lord Ordinary (SALVESEN) pronounced an interlocutor by which he assoltized the defenders from the conclusions of the summons.

The pursuer reclaimed.

At advising—

LORD PRESIDENT—I am quite satisfied, and I propose that your Lordships should lay it down, so as to leave no doubt upon the subject in future, that the Forth, from the Forth Bridge upwards, is a narrow channel in the sense of article 25 of the Regulations for Preventing Collisions at Sea.

LORD M'LAREN, LORD KINNEAR, and LORD PEARSON concurred.

Counsel for Pursuer (Appellant)—W. T. Watson. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Counsel for Defenders (Respondents)—Spens. Agents—Boyd, Jamieson, & Young, W.S.

Thursday, January 28.

#### FIRST DIVISION.

(SINGLE BILLS.)

#### COUL v. AYRSHIRE NORTHERN DISTRICT COMMITTEE.

*Process—Proof—Evidence—Res Noviter—Admissibility of Fresh Evidence after Debate and Judgment.*

Circumstances in which, in an appeal from the Sheriff Court, after proof had been concluded and judgment given by both Sheriffs, the Court allowed new evidence to be led by the defenders, who were appealing.

The Turnpike Roads (Scotland) Act 1831 (1 and 2 Will. IV, cap. 43), sec. 84, which is incorporated with the Roads and Bridges (Scotland) Act 1878 (41 and 42 Vict. cap. 51), by sec. 123 thereof, enacts—"It shall be lawful for the trustees of every turnpike road to make sufficient side drains on any such road, with power to conduct the water therefrom into