pany's interest to get the pursuer's signature, while his interest was only to sign if the Messrs Inglis were good for their proportion of the amount lent. It does not follow that because, assuming fraud and right to rely, and actual reliance on, the defenders' representations, the Bank would certainly, and the insurance company would probably, have had a right against the defenders, that the pursuer should have such a right. The cases quoted to us arising in connection with company prospectuses and directors' reports addressed to the public have no application, and equally cases like *Langridge* v. *Levy* (6 L.J. (Exch.) 137) and *Nocton* are inapplicable, because in the first a direct, and in the second a fiduciary, relation existed, neither of which have any counterpart in the present case.

I therefore concur with the Lord Ordinary that the defenders are entitled to absolvitor.

The Court adhered.

Counsel for the Reclaimer (Pursuer) — Sandeman, K.C.—Gentles. Agent — E. J. Findlay, S.S.C.

Counsel for the Respondents (Defenders) — Blackburn, K.C. — Carmont. Agents — Mackenzie, Innes, & Logan, W.S.

Saturday, December 4.

COURT OF SEVEN JUDGES.

[Lord Ormidale, Ordinary.

BAKER *v.* GLASGOW CORPORATION.

Reparation—Local Authority—Limitation of Action—Public Health (Scotland) Act 1897 (60 *and* 61 *Vict., cap.* 38), *sec.* 166 —"*Any Action, Proceeding, or Operation under this Act*"—*Passenger in Public Street Injured by Passing Ambulance.*

The Public Health (Scotland) Act 1897, section 166, enacts—". . . and every action or prosecution against any person acting under this Act on account of any wrong done in, or by any action, proceeding, or operation under this Act, shall be commenced within two months after the cause of action shall have arisen."

On 5th December 1914 a passenger in a public street was knocked down and injured by a motor-car belonging to the defenders. He raised an action of damages against them on 12th February 1915. The defenders averred that they were the Local Authority under the Public Health (Scotland) Act 1897; that the driver of the car was employed by them as an ambulance driver attached to their fever hospital; that the car was being used in the ordinary course of its work as an ambulance van for the purpose of conveying a patient to hospital. *Held* that the defenders' averments were relevant to show that the action was barred, and proof of these averments allowed.

Expenses — Process — Reclaiming Note— Failure to Inform Lord Ordinary of Authoritative Decisions a Ground for Finding Successful Party Liable in the Expenses of a Reclaiming Note.

A Lord Ordinary dismissed a preliminary plea for defenders. On a reclaiming note the defenders quoted an unreported judgment of the Division in another action against themselves in which the circumstances were practically identical. This case had not been quoted to the Lord Ordinary. Under it he would have been bound to allow a proof of the averments on which the preliminary plea was based. A Court of Seven Judges allowed such a proof.

The Court *found* the successful reclaimers liable in the expenses of the reclaiming note.

Administration of Justice—House of Lords —Poor's Roll—Refusal by House of Lords of Leave to a Litigant to Appeal in forma pauperis on Ground of no Prima facie Case —Authority on Merits — Appeal (Forma Pauperis) Act 1893 (56 *and* 57 *Vict. cap.* 22), *sec.* 1.

The Appeal (Forma Pauperis) Act 1893, section 1, enacts—"Where in an appeal to the House of Lords a petition is presented for leave to sue *in forma pauperis*, and the House on the report of its Appeal Committee determines that there is no *prima facie* case for the appeal, the House may refuse the prayer of the petition."

Opinion per Lord Salvesen that such refusal was not a judgment of the House of Lords binding on the Court of Session as an authority on the merits.

The Public Health (Scotland) Act 1897 (60 and 61 Vict. cap. 38), sec. 166, is quoted *supra* in first rubric.

On 15th February 1915 Benjamin Baker, tailor, 29 Crown Street, Glasgow, *pursuer*, raised an action against the Corporation of the City of Glasgow, *defenders*, to recover damages for personal injuries sustained by him on 5th December 1914, through being knocked down in one of the public streets of Glasgow by a motor car belonging to the defenders.

The defenders averred, *inter alia*—(Ans 1) ". . . Explained that the defenders are local authority under the Public Health (Scotland) Act 1897, and as such are charged with the duty of executing the provisions of the said statute in accordance with the terms thereof. Acting as such local authority, the defenders own and work motor cars used exclusively as ambulances in connection with the fever hospitals maintained by them under the Public Health (Scotland) Act 1897, including Shieldhall Fever Hospital, Glasgow." (Ans. 2) ". . . It is explained that the driver of the motor car in question was employed by the defenders, acting as local authority under the said Act, as an ambulance driver attached to Shieldhall Fever Hospital, Glasgow, one of the hospitals for infectious diseases maintained by them under the said Act. He was solely under the control of the

superintendent of Shieldhall Hospital, and his wages have all along been paid by the defenders out of the assessment raised by them as local authority under the said Act. The expense of maintaining and running the car, and paying the driver, and damages and expenses awarded against the defenders in respect of accidents, are paid out of the Public Health Assessment. At the time of the accident the car was being used as an ambulance in the ordinary course of its work for the purpose of conveying a patient to Shieldhall Hospital."

The defenders pleaded, *inter alia*—"(2) The pursuer being barred from insisting in the present action, in terms of section 166 of the Public Health (Scotland) Act 1897, the action should be dismissed."

On 1st June 1915 the Lord Ordinary (ORMIDALE) repelled the second plea-in-law for the defenders and ordered issues.

Opinion.—"In this action the pursuer seeks to recover damages for personal injuries received by him by his being knocked down by a motor car belonging to the defenders, the Corporation of Glasgow, on 5th December 1914. The action was raised on 12th February 1915, more than two months after the date of the accident.

"In answer 2 the defenders explain that the driver of the motor car was employed by them, as local authority, as an ambulance driver attached to the Shieldhall Fever Hospital, one of the hospitals maintained by them under the Public Health Act 1897, that he was solely under the control of the superintendent of the Shieldhall Hospital, and that his wages and all other expenses incident to the running of the car are paid by them out of the Public Health Assessment. They further aver that at the time of the accident the car was being used as an ambulance in the ordinary course of its work for the purpose of conveying a patient to Shieldhall Hospital.

"They plead—'. . . [*quotes plea 2 supra*] . . .' The provision in section 166 on which this defence is founded is—'And every action or prosecution against any person acting under this Act on account of any wrong done in or by any action, proceeding, or operation under this Act, shall be commenced within two months after the cause of action shall have arisen.'

"The averments in answer 2 not being admitted by the pursuer, they fall, if the defence founded on section 166 is sound, to be remitted to probation.

"In my opinion the defence is not sound.

"While the accident, on the defenders' statement of it, undoubtedly occurred while the driver of the car was engaged in the performance of an action under the Public Health Act, the wrong done to the pursuer was not, in my judgment, in an action, proceeding, or operation under the statute. So far as the pursuer was concerned the action in which the defenders' servant was engaged was confined entirely to the running of him down, and that was not an action under the statute. It was conceded that the running down could not be said to be a wrong done by an action under the statute, and it seems to me that the quality or nature of the action cannot be varied by the substitution of the word 'in' for 'by.' The mere fact that the running down was coincident in point of time with an operation *ex hypothesi* under the statute does not make it in relation to the pursuer an operation under the statute. The present action cannot be said to be an action against the Public Health Authority for negligence in the performance of a statutory duty, as in the case of *Duncan* v. *Magistrates of Hamilton*, 5 F. 160, 40 S.L.R. 141. It is not in terms an action against any person acting under the Public Health Act. The assumption of the provision in section 166, it seems to me, is that the Public Health Authority having a right, if not a duty, under the statute in some way to interfere with the person or property of a subject, have in exercising their statutory power done that subject a wrong. But here the defenders had absolutely no title or right *qua* Public Health Authority or otherwise to interfere in any way with the pursuer; they were not *quoad* him engaged in any action, proceeding, or operation under the statute, and could not therefore do him a wrong in the statutory sense. It was a mere accident so far as he was concerned, and it in no way affects his common law rights of action that when their car came into contact with him they happened to be exercising their statutory powers with reference to someone else.

"I shall therefore repel the second plea-in-law for the defenders and order issues."

The defenders reclaimed. On 19th October 1915 the Court—the LORD PRESIDENT, LORDS MACKENZIE and SKERRINGTON, LORD JOHNSTON absent—appointed the cause to be re-heard before Seven Judges.

The defenders argued—(1) This case was ruled in favour of the defenders by the case of *Sharkey* v. *Glasgow Corporation*—unreported, Second Division, 11th June 1912. Sharkey had appealed to the House of Lords, and on a report by the Appeal Committee the House refused to allow the appeal to proceed *in forma pauperis* on the ground that there was no *probabilis causa*. That was a finding of the House of Lords, as the Appeal Committee did not decide the case but reported on it to the House—Appeal (Forma Pauperis) Act 1893 (56 and 57 Vict. cap. 22), sec. 1—and was binding on the Court of Session. (2) The only question to be determined was the interpretation of section 166 of the Public Health (Scotland) Act 1897 (60 and 61 Vict. cap. 38), since, in virtue of section 3 thereof, the Public Authorities Protection Act 1893 (56 and 57 Vict. cap. 61) did not apply—*Montgomerie & Company, Limited* v. *Haddington Corporation*, 1908 S.C. 127, 45 S.L.R. 73. The first part of section 166 need not be considered. The driver of the ambulance was not an "officer," and the decisions on that part of the section were on the point whether a party acting outwith the powers given in the Act could claim the protection of the section—*Edwards* v. *Parochial Board of Kinloss*, 1891, 18 R. 867, 28 S.L.R. 669; *Mitchell* v. *Magistrates of Aberdeen*, 1893, 20 R. 253, 30 S.L.R. 351; *Sutherland* v. *Magistrates*

of Aberdeen, 1894, 22 R. 95, 32 S.L.R. 81. The latter part of the section, however, applied, and barred the pursuer's action. The words used, "every action," "any person," "any wrong," "any action, proceeding, or operation," were unqualified. *Duncan* v. *Magistrates of Hamilton*, 1902, 5 F. 160, 40 S.L.R. 140, show that "wrong" covered all negligence incidental to any thing done in execution of the Act. There was no authority or reason for confining the section to persons towards whom a duty was being performed or a right exercised under the statute, and such a view led to obvious absurdities—*e.g.*, if a patient in the ambulance had been injured in this collision he had two months within which to raise an action, while the present pursuer was not to be so limited.

The pursuer argued—(1) The refusal of the House of Lords to allow the appeal in *Sharkey* v. *Glasgow Corporation* to proceed *in forma pauperis* did not constitute a judgment of the House binding on the Court of Session. In form it was an order by the House, but it followed as a matter of course on the report of the Committee. That order would not have been *res judicata* on the merits if Sharkey had thereafter prosecuted his appeal in common form. It was a novel proposition that such an order was a binding decision. (2) The Public Health (Scotland) Act 1897, section 166, applied to proceedings in which the authority was engaged under the powers given in the Act. The wrong contemplated was to the person directly concerned in the operation, "to the appropriate victim" of the statutory powers. The pursuer, though injured by the local authority in the course of the exercise of their powers, was not injured in or by the proceedings required by the Act. In relation to the pursuer the ambulance was in the position of any other vehicle—*cf.* section 164; *Ferguson* v. *M'Nab*, 1885, 12 R. 1083, 22 S.L.R. 717. In *M'Coll* v. *Beattie*, 1882, 9 R. 470, 19 S.L.R. 372, the duty undertaken was to take charge of something dangerous and was owed to each member of the public. *Whatman* v. *Pearson*, 1868, L.R., 3 C.P. 422, was in favour of the pursuer. *Sharkey* v. *Glasgow Corporation* should be overruled and the defenders' second plea repelled.

At advising—

LORD JUSTICE-CLERK—In this case the pursuer sues the defenders to recover damages for personal injuries caused to him in consequence of his being struck and knocked down by a motor car belonging to the defenders.

The defenders state (ans. 1) that they are local authority under the Public Health (Scotland) Act, 1897—that as such they own and work motor cars used exclusively as ambulances in connection with fever hospitals maintained by them under said Act, including Shieldhall Fever Hospital.

They further aver (ans. 2) that the driver of the motor car in question was employed by them, acting as local authority under the said Act, as an ambulance driver attached to said hospital; that his wages were paid out of the assessment raised by them under said Act, as were the expenses of maintaining and running the said car; and that at the time of the accident the car was being used as an ambulance in the ordinary course of its work for the purpose of conveying a patient to said hospital.

The defenders refer to the Statute of 1897 and plead that the action has not been timeously brought in respect of the provisions of section 166 thereof.

By that section it is provided, *inter alia*, that ". . . [*quotes v. supra*] . . ."

The accident in question happened on 5th December 1914, and the cause of action then arose. The present summons was not signeted till 12th February 1915, and the defenders accordingly plead in their second plea that the action is too late.

The Lord Ordinary holds that the defenders' averments, above referred to, are irrelevant, and he has accordingly repelled the defenders' said plea-in-law and ordered issues.

In my opinion the Lord Ordinary has erred. I consider that the defenders' averments are relevant, that the defenders should have been allowed a proof of them, and that if they establish the said averments by the proof the action should be dismissed.

In addition to section 166 of the statute we were referred to section 67, by which local authorities are authorised to provide and maintain carriages suitable for the conveyance of persons suffering from any infectious disease, and to pay the expense of conveying therein any person so suffering to a hospital.

In my opinion, if the defenders' averments as above are true, both the defenders and the driver were, when the accident happened, acting under the Act, and any wrong done to the pursuer was done in or by an action, proceeding, or operation under the Act.

The words of the statute are as comprehensive as words can be, "*Every* action . . . against *any* person acting under this Act on account of *any* wrong done in or by *any* action, proceeding, or operation under this Act." It matters not by whom the action is brought, if it is brought against a person acting under the Act for a wrong done in or by an action, proceeding, or operation under the Act. All these requirements were present here according to the defenders' averments. In *Duncan* v. *Magistrates of Hamilton*, 5 F. 160, 40 S.L.R. 140, Lord M'Laren interprets the section as applying to an action "for a wrong done in the exercise of powers conferred upon a local authority" by the statute, and after quoting the section he says—"This seems to me to be just an amplification of the words in other Acts of Parliament with which we are familiar—'for any wrong done in the execution of the Act.'" Lord Kinnear in the same case says that the section applies to an "action founded upon the alleged negligence of the local authority in the performance of a statutory duty." I respectfully agree with these observations.

The Lord Ordinary agrees that "the

accident, on the defenders' statement of it, undoubtedly occurred while the driver of the car was engaged in the performance of an action under the Public Health Act." But he says the wrong done to the pursuer "was not . . . in an action, proceeding, or operation under the statute." Though coincident with, it was not, in relation to the pursuer, an operation under the statute. I cannot reconcile this view with the decision in the case of *Spittal* v. *The Corporation of Glasgow*, 1904, 6 F. 828, 41 S.L.R. 629 In my opinion the wrong done to the pursuer (if the defenders' averments are true) was done in the execution of the Act, and the negligence complained of was negligence in the performance of a statutory duty. I think "in" means "in the course of," and that the present case is covered by the decisions in the cases of *Duncan* and *Spittal*. No doubt the defenders are not here described by the pursuer as local authority as they were in *Duncan's* case, but the defenders aver that they were the local authority, and that their servant, the driver of the car, was employed by and acting for them in that capacity when the accident occurred, and if these averments are admitted or proved, the defence now being considered in my opinion ought to be sustained.

I can find no grounds for the "assumption" which the Lord Ordinary makes when he says—"The assumption of the provision in section 166 . . . is that the Public Health authority having a right, if not a duty, under the statute in some way to interfere with the person or property of a subject, have in exercising their statutory power done that subject a wrong." This assumption is, in my opinion, entirely displaced by the case of *Spittal*.

I am therefore of opinion that the Lord Ordinary's interlocutor should be recalled, and that the case should be remitted to him to allow the defenders a proof of their averments in support of their second plea-in-law.

LORD DUNDAS—I think the Lord Ordinary was wrong in repelling *de plano* the defenders' second plea-in-law. At the outset of his opinion the Lord Ordinary says that the wrong done to the pursuer was not in an action, proceeding, or operation under the statute, because so far as the pursuer was concerned it was "confined entirely to the running of him down, and that was not an action under the statute." That view will not do at all, and, indeed, it was not maintained at our bar. The proceeding or operation was not the running down of the pursuer, but the driving of "an ambulance in the ordinary course of its work for the purpose of conveying a patient to Shieldhall Hospital." But the Lord Ordinary is on less unstable ground in the view which was really the subject of discussion before us. He construes the portion of section 166 here under consideration as applying only in the case of wrong done in or by any action, proceeding, or operation under the Act in regard to those of the lieges with whose person or property the defenders have in some way a statutory right, if not duty, to interfere. The Legislature might no doubt have enacted its provisions as to limitation of actions upon this footing; but it seems to me that the language used is much too wide to admit of so restricted an interpretation; nor has that view ever been suggested in any of the cases dealing with this section, or with similar provisions in other Acts, although the circumstances in some of them afforded room for pleading it. The words of this part of section 166, which I refrain from quoting, are very wide—notably the word "every," and the thrice-recurring word "any." The language used is, no doubt, somewhat loose; a wrong done in an operation under the Act, seems, in a sense, to involve a contradiction in terms, but the words obviously apply to things not done in execution, but professing to be done in execution, of the Act, for things done in strict accordance with its provisions would require no protection by way of limitation of action or otherwise. Nor do I see my way, looking to the wide words of section 166, to construe it as extending only to wrongs done in some action or proceeding for the enforcement of the Act, as contrasted with its execution or administration. It is unnecessary, and I have no desire, to attempt to define the extent and limits of application of this part of section 166. It is sufficient to say that it is, in my opinion, clearly applicable to the present case if the defenders' averments as to the circumstances under which the accident occurred are admitted or proved. I am therefore for recalling the interlocutor reclaimed against, and if the parties are in dispute as to any material fact in regard to this preliminary defence the case will have to go back to the Lord Ordinary for proof on that matter.

With reference to the case of *Sharkey* v. *Corporation of Glasgow*, in the hearing and decision of which in the Second Division on 11th June 1912 I took part along with my brothers Lords Salvesen and Guthrie, I may say that I see no substantial distinction between that case and the present; that I am still of opinion that our decision was sound; and that the argument now mainly relied upon by the present pursuer was not—so far as my recollection goes, and it is fortified by my contemporaneous notes on the papers—advanced or suggested in the Second Division in *Sharkey's* case. As I understand that your Lordships are agreed that the decision in *Sharkey's* case was correct, it is not necessary, as it would otherwise have been, to consider or decide whether what we are informed took place in *Sharkey's* case before the Appeal Committee of the House of Lords, and that House itself might have precluded us from coming to a different result in the case now before us.

LORD SALVESEN—The facts of this case are identical with those which occurred in an action raised in 1911 against the same defenders by a man called John Sharkey. I was a party to the decision in that case, but that circumstance would not in the least indispose me to reconsider it on its merits. The decision was, I am told—for I have no

personal recollection of it — reached after hearing only junior counsel for the pursuer, and the arguments adduced in the debate which we have heard may not have been presented, or only imperfectly presented, in the case of *Sharkey*. We have been informed that Sharkey appealed to the House of Lords, and presented an application to be allowed to sue *in forma pauperis*, which was considered by a committee of the House. They reported that Sharkey had no *prima facie* case, and the application was thereafter refused. It was urged that the decision of the House of Lords was binding upon us, just as much as if *Sharkey's* case had been argued and decided on its merits before our supreme tribunal. I cannot assent to that proposition. All that was decided was that Sharkey's application for leave to proceed *in forma pauperis* should not be granted. If such a decision were to be treated as a decision on the merits a new volume would require to be added to the Law Reports containing a full statement of the facts of individual cases, and the recommendations of the committee who sit on applications for leave to sue *in forma pauperis*, for the order of the House of Lords follows on their report as a mere matter of form. The absence of such a volume is *prima facie* evidence that the decisions of this Committee are not to be treated as binding authorities. It is a mere accident that the ultimate fate of *Sharkey's* case became known to the defenders, for the defence was conducted, not by the Corporation, but by a company with which they were insured. Had the defenders been another body it is more than probable that the fact that a similar question had been raised in a previous case and decided in the first instance by the Second Division would never have come to light.

I hold myself therefore perfectly free to consider the question raised in this case on its merits, giving due weight to the fact that it has already been decided adversely to the pursuer in a previous case by the Second Division and by a Committee of the House of Lords, who dealt with its *prima facie* aspect. So regarding it, I have reluctantly come to be of opinion that the second plea-in-law for the defenders must be sustained. Section 166 of the Public Health (Scotland) Act 1897 is not well expressed. There is, for example, much difficulty in construing the words "any person acting under this Act." It may be that these words are limited to the public health authorities or some superior officials who are responsible for the administration of the Act, and do not include contractors employed by the local authority to execute specific works required in the interests of sanitation, or even servants of the local authority who are sought to be made responsible for their own negligence. It is sufficient, I think, for the decision of this case that if they are to have any meaning at all they must include the public health authority. Again, it is not quite easy to see what is meant by the words "by any action, proceeding, or operation under this Act." "Action" seems primarily to refer to a lawsuit, "proceeding" to legal proceedings, but the word "operation" appears to have a very wide significance. Now this accident happened in the course of the defenders carrying out one of the duties which is laid upon them for the prevention of infection. The driver of the motor ambulance by which a patient was being conveyed to the Shieldhall Hospital was a servant of the defenders, and was at the time engaged on work which it is part of their duty to perform. Assuming that he was negligent in running down the pursuer, I am of opinion that his negligence was a wrong done in or by an operation under the Public Health (Scotland) Act 1897. If so it was a condition-precedent of the pursuer's right to sue the defenders that his action should be commenced within two months after the cause of action had arisen. If it was not so commenced I agree with your Lordships that he has lost his remedy.

LORD MACKENZIE — I agree with your Lordships, and the ground upon which I do so may be very shortly expressed—the operation upon which the defenders' servant was engaged at the time of the accident being one which his employers were under statutory obligation to perform, they are entitled, under the authorities, to the protection of the limitation in section 166 of the Public Health Act of 1897 (60 and 61 Vict. cap. 38).

LORD GUTHRIE — I think the defenders' second plea is well founded. It is not said on record, nor was it found by the Lord Ordinary, nor was it maintained in argument, that the defenders, at the time when the accident to the pursuer occurred, were not performing a statutory duty which they could have been forced to perform, but were merely exercising a right conferred by statute, which it was open to them in their discretion to exercise or not to exercise. The statutory duty they were discharging was that of removing a patient in one of their motor ambulances from his house to one of their infectious hospitals, in terms of section 67 of the Act. Their authority to do so is conferred by the 1897 Act, and they were therefore in so doing acting, in the sense of section 166 of the 1897 Act, under its provisions, and the wrong complained of was something done by an operation under the Act. I see no warrant for the limitation proposed by the Lord Ordinary, namely, that the section only applies when the wrong complained of is done to an individual whose person or property are being interfered with. The operation under the Act was not, as the Lord Ordinary seems to hold, the running down of the pursuer, but was the removal of a patient to a hospital.

LORD SKERRINGTON—I concur.

LORD PRESIDENT — I concur with the opinion of the Lord Justice-Clerk, which I have had an opportunity of reading. It appears to me that this case is completely covered by authority, and that in the judgment we pronounce to-day we are affirming and following the authority of a train of decisions in both divisions of the Court

on this and similar clauses of limitation. From this it follows that the unreported case of *Sharkey* v. *The Corporation of Glasgow*, decided in the Second Division, which was identical with the present case, was well decided.

The language of the statute, it appears to me, could not be expressed in more comprehensive terms. When it speaks of "any wrong done," it means, I think, any wrong done to anybody. If this be so, there is no room for the distinction taken by the Lord Ordinary, and it follows that his interlocutor disallowing the second plea-in-law for the defenders must be recalled.

On 4th December (present, the LORD PRESIDENT, LORD MACKENZIE, and LORD SKERRINGTON) the defenders moved for a proof of the averments relating to their second plea-in-law.

The pursuer moved for the expenses of the reclaiming note, and argued—The case of *Sharkey* had not been quoted to the Lord Ordinary, who would have been bound by it. The carelessness of the defenders as shown on record had caused two weeks' delay in the raising of the action, which was raised only one week beyond the statutory time.

The defenders argued — The argument given by the pursuer here had not been given in *Sharkey*, and the case of *Sharkey* was not the basis of the decision of the Court. The Court had proceeded independently of that decision to construe the section. *Sharkey* had been discovered by accident since the decision in the Outer House. That case had been conducted on behalf of a company with which the defenders were insured, not as in this case by the defenders themselves through their own law agents.

The Court pronounced this interlocutor—

"Recal the interlocutor of 1st June 1915: Allow to the parties a proof of the averments relative to the defenders' second plea-in-law—the defenders to lead—and remit to the Lord Ordinary to take said proof and to proceed: Find the pursuer entitled to expenses since the date of said interlocutor."

Counsel for Pursuer (Respondent)—Anderson, K.C. — Duffes. Agent — James G. Bryson, Solicitor.

Counsel for Defenders (Reclaimers)—Dean of Faculty (Clyde, K.C.) — M. P. Fraser. Agents—Campbell & Smith, S.S.C.

Friday, December 10.

FIRST DIVISION.

[Lord Anderson, Ordinary on the Bills.

THE ADMIRALTY *v.* BLAIR'S TRUSTEE.

Bankruptcy — Sequestration — Crown — Claims—Preference—Damages for Breach of Contract Payable to Admiralty—Prerogative Right of Crown to Preferential Ranking—Act 33 *Henry VIII, cap.* 39, *sec.* 74—*Act* 6 *Anne, cap.* 26, *sec.* 7.

In a sequestration the Lords Commissioners of the Admiralty claimed a preferential ranking in respect of a sum due as damages for failure by the bankrupt to fulfil a contract made with them. The trustee on the sequestrated estate rejected the claim for preferential ranking, but admitted the debt to an ordinary ranking.

Held that the trustee was right in refusing the claim to a preferential ranking and in admitting the debt to an ordinary ranking.

Lord Advocate v. *Galbraith*, 1910, 47 S.L.R. 529, *overruled.*

The Act 33 Henry VIII, cap. 39, section 74, enacts—". . . If any suit be commenced or taken, or any process be hereafter awarded for the King for the recovery of any of the King's debts, that then the same suit and process shall be preferred before the suit of any person or persons; (2) and that our said Sovereign Lord, his heirs and successors, shall have first execution against any defendant or defendants, of and for his said debts, before any other person or persons, so always that the King's said suit be taken and commenced, or process awarded, for the said debt at the suit of our said Sovereign Lord the King, his heirs or successors, before judgment given for the said other person or persons."

The Act 6 Anne, cap. 26, section 7, enacts—". . . The said barons of the Court of Exchequer in Scotland, or any one or more of them, either in court or out of court, shall have full power and authority to take all manner of recognisances and securities for debts, and that all obligations, recognisances, specialties, and other securities for any the revenues, rents, debts, duties, accounts, profits, or other things accruing, or which shall or may become due or accrue to the Queen's Majesty, her heirs or successors, within Scotland, or which shall in any wise concern or relate thereto, or any the officers, ministers, or accountants thereof, or for the same, or which shall be taken in or by order of the said Court of Exchequer in Scotland, or upon any other account for the use or benefit of the Crown, or for securing any the revenues, debts, or duties of the Crown, shall be taken in the name of the Queen's Majesty, her heirs and successors, and to be paid to the Queen's Majesty, her heirs and successors, with other proper words, and with and under such conditions as shall be suitable to