nevertheless the respondent chose to remain in their employment. I cannot see how in this situation an implied contract to pay this additional 5s. can be inferred from the actings of parties.

I agree that on the merits the appeal must be sustained.

The Court pronounced this interlocutor—

". . . Sustain the appeal: Recal the interlocutors of the Sheriff and Sheriff-Substitute dated prior to 4th May 1922 in so far as they repel the defenders' fourth plea-in-law: Recal the interlocutors of 4th May 1922 and 26th June 1922: Find in fact (1) that the pursuer was employed by the defenders at their factory in Clydebank from 1917 till 11th February 1921; (2) that she was employed till 3rd July 1920 as a piece worker and thereafter till 7th October 1920 as a time worker; (3) that the Award No. 174, the Order No. 260, and the Award No. 428 all applied to the class of workman to which the pursuer belonged and to the said factory as from 26th February 1919; and (4) that during the whole period covered by the claim the defenders paid to the pursuer wages at rates (or based upon piece prices) in excess of the following rates (or piece prices):—*Time Workers.*—5½d. an hour plus 11s. a full ordinary week, plus 5s. a full ordinary week. *Piece Workers.*—Such piece prices as enabled every woman of ordinary ability to earn at least 25 per cent. over the above time rate of 5½d. per hour, plus 11s. a full ordinary week, plus 5s. a full ordinary week: Find in law that for the period in respect of which the claim is made the defenders have discharged all obligations resting upon them in relation to the pursuer under the Wages (Temporary Regulation) Act 1918 and the said awards and order: Therefore assoilzie the defenders from the conclusions of the summons, and decern. . . ."

Counsel for the Pursuer—Mackay, K.C.—Patrick. Agents—Maxwell, Gill, & Pringle, W.S.

Counsel for the Defenders—Macmillan, K.C.—Robertson, K.C.—Strachan. Agents—J. W. & J. Mackenzie, W.S.

Friday, March 9.

FIRST DIVISION.

[Lord Morison, Ordinary.

"VITRUVIA" S.S. COMPANY, LIMITED *v.* ROPNER SHIPPING COMPANY, LIMITED.

Ship—Collision—Damages—Detention for Repairs—Existence of Other Defects not Attributable to Collision but Discovered during Detention—Liability for Loss Due to Detention.

A ship injured but not rendered unseaworthy by collision, liability for which was admitted by the other vessel, was diverted for repair of the damages occasioned by the collision. During the detention for repairs a defect not attributable to the collision was disclosed. This defect, though serious, did not render the vessel unseaworthy. *Held*, in respect that it was not proved that the defect was such as to have prevented the ship from successfully completing her next voyage had she been allowed to proceed with it, that the loss due to detention fell to be borne by vessel responsible for the collision.

Ship—Collision—Damages—Detention for Repairs—Loss of Profits—Proof of Loss.

A ship damaged by collision, liability for which was admitted, was, at the time when she was diverted for repairs, under charter to perform four voyages, the second, third, and fourth of which her owners were free to carry out at dates most convenient to themselves, provided only that the voyages were consecutive. The ship was detained for twenty-two days by the repairs, and the four voyages were thereafter completed in time to enable her to fulfil the contract. It was not proved that the ship had suffered any specific loss in consequence of the detention after the completion of the fourth voyage. *Held* that the ship responsible for the collision did not, owing to the absence of evidence of specific loss, escape liability for damages for loss of profits due to detention.

Interest—Ship—Collision—Damages—Cost of Repairs—Loss of Profits Due to Detention—Period from which Interest Runs.

The owners of a ship which had been injured by collision, for which liability had been admitted, paid for the repairs, the amount having been agreed between the parties before payment. *Held* (1) that the owners were entitled to interest on the cost of repairs from the date on which they had paid the account, the extent of the repairs, and the liability therefor not being disputed; but (2) (*rev.* judgment of Lord Morison, Ordinary) that interest was not chargeable on the damages for loss of profits due to detention until the date of the decree decerning for payment of the principal sum.

The "Vitruvia" s.s. Company, Limited, Glasgow, *pursuers*, brought an action against the Ropner Shipping Company, Limited, West Hartlepool, *defenders*, for £16,929, 6s. 3d., with interest at 5 per cent. from 25th January 1920, being damages sustained by the pursuers as the result of a collision between the s.s. "Vitruvia," belonging to the pursuers, and the s.s. 'Carperby," belonging to the defenders, on 25th January 1920.

The parties averred—"(Cond. 3) By letter, dated 11th March 1920, from Sir R. Ropner & Company, Limited, the managing owners of the 'Carperby,' to Gow, Harrison, & Company, the managing owners of the 'Vitruvia,' liability for the collision was

admitted on behalf of the 'Carperby.' (*Ans.* 3) Admitted. (Cond. 4) Notwithstanding having admitted liability the defenders refuse or delay to pay to the pursuers the amount of loss and damage sustained by them on account of the said collision. . . . The vessel came into Glasgow in ballast for the purpose of having the repairs done, and also left Glasgow without a cargo after they were completed. . . . The defenders wrote the pursuers on various occasions pressing them to have the repairs executed, and to send a statement of their claim together with vouchers. In view of this the pursuers made arrangements in July to have the repairs executed on the vessel's return to the Clyde in August 1920. The defenders were kept duly advised of the arrangements for repairs being executed and they acquiesced therein. A surveyor representing defenders was present when the vessel was again surveyed in August prior to the repairs being put in hand, and the defenders were consequently fully cognisant of the whole position. . . . (*Ans.* 4) . . . The defenders have all along been, and still are, willing to pay the pursuers any loss or damage sustained by them as the result of the said collision for which they are legally liable, and within the limits of their statutory liability. . . . The defenders deny that they requested the pursuers on various occasions to have the repairs executed. Explained that by charter-party, dated 25th June 1920, entered into by the pursuers for the s.s. 'Vitruvia,' it is provided that the lay-days were not to commence before 20th August 1920 unless with the charterers' sanction, and that it was further provided therein that should the steamer not be ready to load by 20th November 1920 the charterers should have the option of cancelling the said charter-party. The usual margin of lay-days is one month, and the charter-parties of the vessel prior to the charter referred to contained only such a similar small margin. The defenders believe and aver that the wide margin of three months contained in the charter-party of 25th June 1920 was stipulated for because the pursuers had at the time the intention of effecting considerable repairs on the said vessel which the pursuers might consider were necessary, and made provision therefor accordingly. Assuming but not admitting that the defenders acquiesced in repairs being executed in August 1920, it was the duty of the pursuers to inform the defenders before the work was allowed to proceed of the actual state of affairs with regard to the cost of the detention of the vessel at that particular period, especially in view of the most extraordinary rate per diem claimed as compared with the general situation prevailing in the shipping market at the period when the repairs were effected. This duty the pursuers failed to perform. . . . In any event, the number of days charged for as demurrage and the rate of charge per diem are excessive."

The pursuers pleaded, *inter alia*—"3. The repairs to the s.s. 'Vitruvia' having been executed at the request of and with the full knowledge and acquiescence of the defenders, the defenders are barred from disputing liability to pay demurrage for the time the vessel was detained. 4. The pursuers being entitled to repair the collision damage at the first convenient opportunity are entitled to decree *de plano* for the sums admitted, and also for the demurrage item."

The defenders pleaded, *inter alia*—"3. The defenders having been all along willing to pay to the pursuers any sum shown to be properly due to them by the defenders, they should be assoilzied."

On 19th July 1922 the Lord Ordinary (MORISON) after a proof, the import of which sufficiently appears from their Lordships' opinions, decerned against the defenders for payment of the sum of £16,030, 13s. 11d., in full of the conclusions of the summons, with interest thereon at the rate of five per cent. from 17th February 1921.

Opinion.—"The pursuers are the owners of the s.s. 'Vitruvia.' The defenders are the owners of the s.s. 'Carperby.' On the 25th January 1920 the 'Carperby' by reason of the negligence of those in charge collided with the 'Vitruvia' and caused her damage in the aft portion of the ship.

"The defenders admit liability for the damage, but dispute the principles on which the pursuers' claim is assessed and maintain that the sums claimed are excessive.

"The items in the pursuers' schedule of claim No. 1, No. 4 to the extent of £8, 15s., No. 5 to the extent of £50, No. 6 to the extent of £11, 18s., Nos. 8, 9, 14, and 15, and No. 16 to the extent of £10, 10s., are admitted and not in controversy. A further sum of £30 is adjusted as due by the defenders in connection with the overhaul of the 'Vitruvia's' cable.

"The balance of the items in the claim consist of (1) dues and relative outlays paid by the pursuers in connection with the docking of the 'Vitruvia,' (2) charges for demurrage, and (3) the loss of oncost charges.

"The defenders dispute their liability for these items in the claim. At the conclusion of the proof it was agreed that the steamer's net profit might be fairly estimated at £531, 10s. 5d. per day, and that the loss of oncost might be taken at £127, 10s. per day.

"The amount of the charges in the schedule for harbour dues, pilotage, and relative payments was not in dispute.

"The admissibility of these claims all depends upon whether the pursuers have shown that the ship was detained for repairs in consequence of the collision, and the large sums claimed under the headings demurrage and oncost charges depend upon whether the period of detention is to be taken at 22 days or not.

"I marked on No. 11 of process at items 12, 13, and 16 the figures adjusted by parties at the termination of the proof without prejudice to their respective contentions on the questions of principle at issue.

"The liability of the wrongdoing shipowner for the consequences of his wrongful act is in my opinion determined by the extent to which the injury occasioned to the pursuer was a natural and probable consequence of that act. A ship is a thing

by the use of which money may be earned, and if the effect of the injury is to detain the ship then the injurer is liable both in the expenses of the detention and the amount of the profit lost.

"In the '*Argentino*' (14 A.C. 519, at p. 523) Lord Herschell said—'I think the damages which flow directly and naturally or in the ordinary course of things from the wrongful act cannot be regarded as too remote. The loss of the use of a vessel and of the earnings which would ordinarily be derived from its use during the time it is under repair and therefore not available for trading purposes is certainly damage which directly and naturally flows from a collision.'

"This principle has been frequently applied. It was applied by Sir Francis Jeune in '*The Kate*' (1899, P. 165), where the learned President laid it down that the general principle which governs the assessment of damage is '*restitutio in integrum* qualified by the condition that the damage sought to be recovered must not be too remote.'

"The same doctrine was upheld by the Court of Appeal in the '*Racine*,' 1906, P. 273.

"The burden, however, of proving the detention of the ship and the loss which has been thereby caused rests upon the pursuers.

"The defenders maintained on the facts that no detention had been proved to be due to the collision, and contended that during the period while the 'Vitruvia' was in dock for repairs she was not seaworthy and was unable to earn profit. It is necessary to examine the facts on this subject.

"It appears from the charter-parties produced that on 16th December 1919 a chain of charter-parties had been arranged for the 'Vitruvia.' Further charter-parties were entered into on 12th April 1920 and 25th June 1920, and on the evidence I have no doubt that fitted with tanks as the 'Vitruvia' was she would have had no difficulty in obtaining continuous employment during the year 1920 at the high freights then prevailing.

"In 1919 the 'Vitruvia' had been engaged on Admiralty service, and the vessel's masts had been removed. In January 1920 the vessel was returned by the Government to the pursuers, who made arrangements to have her masts refitted at Glasgow. She arrived at the Tail of the Bank on 23rd January. She was lying at anchor there on the 25th January when the collision occurred. The damage sustained was entirely above the water line and did not render the vessel unseaworthy. She was then awaiting a berth at the dock and no dock was available until January 30th. The services of the crane to ship the masts could not be obtained until 4th February, and her masts were thereafter shipped. She loaded bunkers on the 10th February and sailed under the charter-party then current on the 13th February.

"In the interim the damage caused by the collision had been surveyed by both parties. The survey occupied three days. It was not possible to carry out any of the work of the repairs to the ship concurrently with bunkering, as the collision damage was in the same part of the ship as the coal bunkers. But the ship's cable which had been injured in the collision was reconditioned and repaired, and the cost of this had been adjusted.

"While the 'Vitruvia' was lying in dock in the beginning of February the problem which the collision presented to her managers was one of some difficulty.

"As appears from the Survey Report, No. 167, and Messrs Barclay Curle's Account, No. 27, substantial repairs were necessary as the result of the collision.

"Labour was scarce and the conditions in the yards were difficult. On the other hand the 'Vitruvia' was seaworthy and capable of fulfilling the chain of valuable charters which she had recently entered into and her managers were being urged to deliver. The cancelling dates of the charters, viz., 15th March 1920, was approaching.

"In these circumstances I think the managers of the 'Vitruvia' were right in deciding to postpone the execution of the collision repairs until after the charters were implemented, when they had reason to anticipate that labour would be more plentiful and labour conditions somewhat improved.

"The managers' decision to sail was communicated to the defenders and they took no exception to it. On the 12th March 1920 the pursuers' managers wrote to the defenders intimating that they would give due notice when the 'Vitruvia' would be ready for repairs, and that they would keep down the cost of the repairs and time.

"On the 20th July the pursuers' managers intimated that the 'Vitruvia' would return to this country for repairs in the course of three or four weeks, and no exception was at any time stated by the defenders to this course being followed. In my opinion it was a reasonable course for the pursuers to take, and no suggestion was made that they had unduly delayed to repair the damage.

"I think it is proved in the evidence that the 'Vitruvia' came to Glasgow in ballast in the month of August 1920 to have the collision repairs carried out. She was at that time surveyed again on behalf of the defenders and no suggestion was made by them that the repairs should not then be carried out. The repairs were commenced on 12th August and completed on the 3rd September as the defenders surveyors' report and Messrs Barclay Curle's account show. They thus occupied a period of 22 days.

"It was suggested by the defenders that the repairs should have been executed while the 'Vitruvia' was undergoing her ordinary survey. The survey was not due until November 1922. In my opinion the pursuers were not bound to keep their ship in a damaged condition until this date. This contention was not supported by the learned Solicitor-General in his address, and indeed it is inconsistent with his main argument.

"He contended that this period of detention was due to the state of the 'Vitruvia's'

propeller which required repair and rendered the vessel unseaworthy. I think this view is not supported by the evidence. Mr M'Innes and Captain Croker both say that the 'Vitruvia' came to Glasgow in August in order to have the repairs due to the collision carried out, and Captain Croker mentions that it was only after she had been ten days there that the engineer mentioned that he suspected the propeller was out of order. The 'Vitruvia' was then afloat and it was in consequence of the engineer's report that the captain arranged that the 'Vitruvia should be dry-docked, as in fact she was on the 2nd of September.

"The repair to the propeller, which was of a minor character, occupied 7 hours. I do not think the defenders are liable for any loss which occurred through the detention of the ship on account of the repair to the propeller, but in my view the whole period of 22 days' detention was caused by the collision repairs. I have the less hesitation in accepting this figure as the pursuers have not included any period either in respect of the overhaul of the ship's cable which was rendered necessary by the collision, or in respect of the survey of the damage.

"From the evidence of the 'Vitruvia's' engagements under the charter-parties produced I am of opinion that the vessel would have been at sea earning profit for the pursuers if she had not been damaged by the collision and detained for 22 days to effect the necessary repairs.

"The agreed rate of profit of £531, 10s. 5d. per day is a high figure, but I think it is a moderate estimate and reflects only the very large profits which shipowners were apparently able to earn at that time.

"As regards oncost charges, the figure was adjusted at £127, 10s. per day. The total for these two items reaches the large figures of £11,693, 8s. 10d. and £2805 respectively.

"The dock dues, pilotage charges, &c., amount *in toto* to £244, 19s. 6d. As the pursuers would have had to incur charges of this nature in connection with the repair to the propeller and some other repairs they debit themselves with one-half of this sum and charge the defenders with the balance. I think this is a very reasonable proposal and I shall adopt it.

"I shall accordingly decern against the defenders for £16,030, 13s. 11d., the amount of the items which are in my opinion due.

"The pursuers moved for interest on the amount of the damages awarded from 17th February 1921, the date on which the cost of the ship's repairs were paid. It was pointed out that in the English Court of Admiralty the date was usually taken as the commencement of the interest-bearing period, and this view is supported by the passages in Mr Roscoe's book to which I was referred.

"The Solicitor-General for the defenders contended that it was contrary to our law to apply this rule. He argued that our well-established principle was that interest did not run on a claim of damages before the damage has been ascertained. A consideration of the authorities has convinced me that this rule is not absolute or inviolable —see *Dunn & Company*, 21 R. 880; *Denholm*, 3 Macph. 815; and *The 'Olga,'* 7 F. 739.

"When the amount of damages claimed is illiquid and cannot be vouched this rule in general applies, for the reason that until a man knows the amount of the principal liability he has to discharge he cannot be said to be in default. But it follows from the opinions of the learned Judges in the case of *Denholm* (3 Macph. 815) that there are cases of damages in which a jury are entitled to consider the question of interest as an item in the claim. It has also been settled both by practice and authority that when a judgment of a Lord Ordinary awarding damages is affirmed in the Inner House no award of interest can be made from the date of the Lord Ordinary's interlocutor. On the other hand the House of Lords, by section 19 of the Court of Session Act 1808, may in its discretion give decree for interest, simple or compound, on the sums awarded in the Courts below.

"In the case of *Carmichael* (8 Macph. (H.L.) 119) Lord Westbury stated our rule in regard to interest in a single sentence—'Interest can be demanded only in virtue of a contract, express or implied, or by virtue of the principal sum of money having been wrongfully withheld and not paid on the day when it ought to have been paid.'

"In my opinion a claim for interest is in certain circumstances a relevant item of damage to be laid before a jury or the Lord Ordinary sitting as a jury, and as a general rule this is so where the fault of a wrongdoer has involved his victim in outlay or expense.

"I think I am bound in this case to consider the question of interest in my award of damages. The principle I have to apply is *restitutio in integrum*, and in applying that principle a lump sum is not awarded as in the case of an ordinary action of damages, but the pursuers' actual expenditure and outlay is carefully scrutinised and the ship's profits are ascertained on a definite and practical basis. If this collision had not taken place the pursuers would not have incurred the outlay they did, and they would have reaped their profit long prior to the 17th February 1921.

"The examination of the accounts and vouchers in this case has resulted in an agreement between parties in regard to all the figures. The pursuers have throughout offered every facility to the defenders in order that they might ascertain the measure of the loss which the collision had caused.

"Since at least the 17th February 1921 the pursuers have been out of pocket to the extent of the sums awarded and the defenders have retained sums of like amount, presumably obtaining interest upon them during a like period. In these circumstances it seems to me that to deny interest to the pursuers is to benefit the defenders at their expense. I shall accordingly allow interest on the sum decerned for at the rate of 5 per cent. from the 17th February 1921, and I do so (first) because I apprehend that I have to apply the principle of *restitutio in*

integrum in assessing the damages, and (second) because the principal sum decerned for has in my opinion been wrongfully withheld within the meaning of Lord Westbury's dictum."

The defenders reclaimed, and argued—1. The pursuers were bound to prove that the detention was caused by the collision repairs but had failed to do so. It might have been caused by the unseaworthy condition of the ship arising from the defect in the propeller which also required to be repaired, and pursuers were bound to prove that it was not so due before they could claim against the defenders for the whole detention. Further, the pursuers were bound to prove, but had not proved, actual loss of profit due to detention. If there was loss it could be ascertained. It was not enough to claim estimated loss. There was no evidence to show that but for the detention the charter-party would have been fulfilled twenty-two days sooner than it was, and that other charters would have been arranged — *The "Clarence,"* (1850) 3 W. Rob. 283; *The "Argentino,"* (1888) 13 P.D. 191, *affd.* (1889) 14 App. Cas. 519; *The "Haversham Grange,"* [1905] P. 307, *per* Collins, M.R., at p. 312; *The "Mediana,"* [1900] A.C. 113. The decision in the *"Treleigh,"* referred to in Roscoe's Measure of Damages in Maritime Collisions, was unsound. 2. In any event the pursuers were not entitled to interest, as allowed by the Lord Ordinary, as from the date when repairs were paid for, but only from the date of the Lord Ordinary's interlocutor. The pursuers' contention that this allowance was in accordance with the practice of the Admiralty Court was not supported by proof. The only authority for it was Roscoe's Measure of Damages in Maritime Collisions, p. 104. But even if such was the case, that practice should not overrule the common law of Scotland that interest on damages was only allowed from the date of decree—*Blair's Trustees* v. *Payne*, 1884, 12 R. 104, *per* Lord Fraser at p. 109, 22 S.L.R. 54; *Carmichael* v. *Caledonian Railway Company*, 1870, 8 Macph. (H.C.) 119, *per* Lord Westbury at p. 131, 7 S.L.R. 666; *Parker* v. *North British Railway Company*, 1900, 7 S.L.T. 304; *Denholm* v. *London and Edinburgh Shipping Company*, 1865, 3 Macph. 815. The only authority in support of the pursuers' contention as to the practice in the Court of Admiralty was a passage from Roscoe's Measure of Damages in Maritime Collisions. Although there was some authority for the extension of such a practice to Scotland in *Owners of The "Olga"* v. *Owners of The "Anglia,"* 1905, 7 F. 739, *per* Lord Kyllachy at p. 744, 42 S.L.R. 439, that case was one of damages for total loss and the question of the date from which the interest should run was not argued.

Argued for the pursuers and respondents —1. The defenders had adjusted the amount of the claims and had not either on record or at the proof raised the question of whether the detention was caused by the collision repairs, and were not entitled to do so now. There was further nothing in the evidence to support the contention that the detention was due to the condition of the propeller or that owing to it the ship could not have carried out the voyages for which she was engaged. The pursuers had proved that the collision repairs occupied the twenty-two days of detention and had thus established a *prima facie* case for damages. There was a presumption of loss in such cases—*The "Argentino"* (*cit.*) *per* Bowen, L.J., at p. 201; *The "Valeria,"* [1922] A.C. 242, *per* Lord Buckmaster at p. 247; Roscoe's Measure of Damages in Maritime Collisions, pp. 84, 86, 89. *The "Clarence"* (*cit.*) was merely the decision of a registrar. It was not necessary to prove the actual loss—*The "Kingsway,"* [1918] P. 344, *per* Hill, J., at p. 352, and Scrutton, L.J., at p. 362; *The "Glenfinlas,"* reported in a note to *The "Kingsway"* at p. 363. 2. Interest was due from the date of the collision on demurrage in the same way as it was on the cost of repairs — Roscoe's Measure of Damages in Maritime Collisions, p. 39 and 104. This principle had been recognised in Scotland—*Owners of "Olga"* v. *Owners of "Anglia"* (*cit.*), and its application could not be limited to cases of total loss. It was in accordance with the practice in the Court of Admiralty—Roscoe *supra*; *The "Kong Magnus,"* [1891] P. 223; *The "Hebe,"* (1847) 2 W. Rob. 530—and in shipping cases ought to be followed in Scotland in preference to the common law—*Currie* v. *M'Knight*, (1896) 24 R. (H.L.) 1, *per* Lord Watson at p. 3, 34 S.L.R. 93, [1897] A.C. 97; *Dunn & Company* v. *Anderston Foundry Company*, 1884, 21 R. 880, 31 S.L.R. 696. The observations *per* Lord President in *Pollich* v. *Heatley*, 1910 S.C. 479, at p. 478, 47 S.L.R. 402, on this question were *obiter* and no argument on the matter had been submitted.

At advising—

LORD PRESIDENT—I have had an opportunity, after consultation, of reading the opinion which Lord Skerrington is about to read, and I entirely concur in it.

LORD SKERRINGTON—The attack made by the defenders and reclaimers on the Lord Ordinary's award of damages was limited to three items, viz., demurrage (£11,693, 8s. 10d.) in respect of the detention of the pursuers' ship "Vitruvia" for 22 days while she was undergoing her collision repairs; oncost charges (£2805) during the same period; and the decerniture for interest at 5 per cent. from 17th February 1921 upon the total amount of the award (£16,030, 13s. 11d.). During the course of the debate the pursuers' counsel suggested that the claim for oncost charges might possibly be defended upon independent grounds which did not apply to the demurrage, but after some discussion the point was not further insisted on, and the argument proceeded and ended on the footing that the two claims must share the same fate.

Out of the 26 running days during which the pursuers' ship was under repair at Glasgow, viz., from 13th August to 7th September 1920, both inclusive, the defenders' counsel admitted that 22 days were properly occupied in executing the repairs necessary

to make good the injuries sustained by the pursuers' ship through the collision which took place on 25th January 1920 and which was confessedly due to the fault of the defenders. Counsel expressly stated they did not object to the claim for demurrage upon the ground that the collision repairs were not executed until after an interval of more than six months, during which interval the ship performed no less than four voyages under various charter-parties. They could hardly have stated any such objection seeing that freights were rapidly rising during this interval, and that their clients were not asked to pay more in name of demurrage than would have been appropriate if the vessel had been repaired immediately after the collision. The objections to the demurrage award urged by the defenders' counsel were two in number. Though the record did not give proper notice of them, they were in my judgment competent objections seeing that they arose out of the evidence adduced by the pursuers and had been argued before the Lord Ordinary.

The first objection to the award of any sum whatsoever for demurrage was based on the admitted fact that the vessel's propeller was loose during the 22 days occupied by the collision repairs. The pursuers' representatives in Glasgow when informed that a knock had been heard in the propeller, considered that the repair of the defect was urgently necessary. They held and acted on the opinion that the "Vitruvia" ought not to go to sea without having her propeller examined in dry dock and put right. The pursuers' surveyor and naval architect deponed that the nut on the propeller had worked slack during her last voyage, with the result that although the ship was not unseaworthy she might have become so if she had gone to sea as she stood. In point of fact it took only 7 hours to give the necessary half-turn to the propeller nut and to complete the repair. Dry docks, however, were much in demand at the time, and about fourteen days elapsed before a berth could be obtained. Further, for some unexplained reason, the ship's engineer did not report the fact that he had heard the knock until eight or ten days after his arrival in Glasgow. The defect therefore existed during the whole 22 days of the collision repairs, though it was put right in the course of the four following days. On the other hand the Lord Ordinary held it proved that the vessel was brought to Glasgow from Rouen on 12th August 1920 for no other reason except to undergo her collision repairs, and in particular he negatived the suggestion that one of the objects in view was to have the propeller put right. Though the story told by the pursuers' witnesses in regard to the tardy discovery of the defect was in certain respects a strange one, the Lord Ordinary believed it. Such being the facts, I do not think it a necessary inference that the vessel could not have successfully performed her chartered voyage and earned her freight if instead of being brought to Glasgow from Rouen for collision repairs she had been allowed to proceed with her next voyage, bunkering at a port in the South of England, then crossing to Texas and returning to Rouen with a cargo of oil. If necessary it could have been arranged that she should be dry-docked at the end of this voyage without any time being wasted in waiting for a berth. I think that the Lord Ordinary was right in repelling this objection.

The next objection to the demurrage claim was that the pursuers had failed to prove that they had in consequence of the collision repairs been prevented from performing any one of the four highly profitable voyages which they had undertaken to perform by their charter-party. Each voyage was from a French port to an American port and back to a French port with a cargo of oil for the French Government. This charter-party was extremely advantageous to the pursuers, not only as to rates of freight, but also as to loading and cancelling dates. As regards the second, third, and fourth voyages, the pursuers were left free to carry them out at the dates most convenient to themselves, provided only that the voyages were "consecutive." The first of the four voyages began on 8th September 1920, the day after the vessel came out of dry dock in Glasgow. The last voyage ended on 21st April 1921. Upon these facts it was objected that the only effect of the detention of the ship for collision repairs in August-September 1920 was that she was 22 days later than otherwise would have been the case in completing her four voyages, and that it had not been proved that she suffered any loss at or after 21st April 1921 in consequence of this delay. This argument imposes what seems to me to be a novel and unreasonable burden of proof upon the pursuers. I think that it was enough for them to prove as they did that for a considerable time after the collision there was a great demand for tank ships, that freights were rising, and that the "Vitruvia" was able to earn for her owners £531, 10s. 5d. of daily net profit over and above her daily oncost charges of £127, 10s. These two figures were adjusted sums agreed upon by the litigants after careful consideration, as appears from the pursuers' statement of claim and the adjustment of claim. As has been already indicated the profits would have been much higher if taken at the time when the repairs were executed, but the statutory limitation of liability deprived the pursuers of any interest to state their claim at its highest. The defenders' counsel submitted an elaborate argument in regard to the purpose which his clients had in view when they adjusted these figures, but he did not satisfy me that the adjustment could reasonably bear any interpretation other than what I have stated. In my judgment this objection also falls to be repelled.

The last objection related to the interest upon the sum awarded as damages. The summons concludes for interest upon the total sum claimed at 5 per cent. from 25th January 1920, and the Lord Ordinary decerned for such interest from 17th February 1921, the date on which the cost of the ship's

repairs was paid. In the ordinary case it would be for the benefit of the wrongdoer as well as of the owner that the shipwright's account should be paid as early as possible so that the ship might be free to go to sea and earn profits, but this consideration does not apply to the facts of the present case. Moreover, it is difficult to see why interest should begin to run upon the claim for demurrage from the date selected by the Lord Ordinary. He based his judgment (*a*) upon the principle of *restitutio in integrum*, and (*b*) upon the ground that the principal sum had in his opinion been wrongfully withheld. He did not proceed upon the alleged practice of the English Court of Admiralty. While it would be desirable that the practice in the two countries should be the same, that ground of judgment could not have been adopted without clearer evidence than was submitted to us in regard to the existence and limits of the alleged practice, and without a fuller argument than was addressed to us upon the question whether such a practice, if it exists, should be regarded as part of the Admiralty law of Britain. I have no difficulty, however, in adopting the second of the Lord Ordinary's grounds of judgment in so far as regards the item of £1270, 14s. 10d., being the cost of the repairs. A claim of damages in respect of money paid out of pocket is in a specially favourable position as regards interest, and in the present case there is the specialty that the defenders had admitted liability for the collision, and that the amount of the repairs account had been agreed between the representatives of the litigants prior to 17th February 1921. Possibly it might also have been argued that some or all of the smaller items in the statement of claim were of a kind upon which it is usual in our practice to allow interest from the date of citation when that is concluded for. Even, however, if interest is concluded for from the date of citation or from an earlier date it is very unusual in our practice to allow it upon an illiquid claim of damages from a date earlier than the application of the verdict or its equivalent. In view, however, of the observations of eminent Judges in the cases of *Lenaghan* v. *Monkland Iron and Steel Company* ((1858) 20 D. 848) and *Denholm* v. *London and Edinburgh Shipping Company* ((1865) 3 Macph. 815) it cannot be said that it is either incompetent or necessarily improper to allow interest upon an illiquid claim of damages from a date earlier than the application of the verdict or its equivalent. Such interest was actually allowed in the case of *Dunn & Company* v. *Anderston Foundry Company* ((1894) 21 R. 880), but the case was regarded by the Court as one where money had been contracted to be paid at a particular time. As regards *The "Olga"* ((1905) 7 F. 739, 8 F. (H.L.) 22, 1907 S.C. 1045) the reports do not, so far as I can see, explain upon what grounds the Lord Ordinary and the Court allowed the pursuers interest at 5 per cent. from the date of the collision upon the capital sum for which decree was pronounced in the original action of damages. Possibly the defenders did not object but relied upon their statutory limitation of liability. In any case a sum which represents part of the capital value of a ship which has been totally lost may stand as regards interest in a different position from a principal sum which represents the estimated amount which a ship would have earned during a certain period if she had not been detained in harbour for collision repairs. In the present case the safer course, in my opinion, is to follow the ordinary practice in the absence of any special reason for deviating from it, and to allow interest on the principal sum decerned for only from the date of the Lord Ordinary's decree (19th July 1922), except as regards the item of £1270, 14s. 10d., upon which interest should be allowed from 17th February 1921.

LORD CULLEN—I concur in Lord Skerrington's opinion, which I have had an opportunity of considering.

LORD SANDS—The s.s. "Vitruvia" was laid up for 22 days in Glasgow undergoing repairs in respect of damages occasioned by a collision for which the defenders are responsible. The pursuers claim a large sum in respect of loss occasioned to them by this detention. In order to make good this claim the pursuers must establish that their vessel was detained for 22 days when otherwise she might have been employed under charter, and they must also prove that they have suffered loss thereby. As the argument was presented the latter of these two questions comes first in order. It was argued that *esto* that it is proved that the ship was detained for repairs for 22 days no resulting loss is proved. The ground of this contention was that the ship was at the date of the repairs under charters for four consecutive voyages. She completed all these voyages. It is not suggested that an additional voyage could have been interpolated. It is not proved that having regard to the particular terms of these charters as regards lay-days, &c., the vessel could have completed the series of four voyages a day sooner than was actually the case. This seemed a formidable argument, but it was largely dissipated by an explanation which was forthcoming only at the close of the debate, that instead of four charters there was one charter for four voyages, and that it was open to the vessel to complete these voyages in succession without any interval. In this view the running contracts would have been completed and the vessel have been free to seek other employment three weeks sooner than was actually the case. It was argued, however, that this infers that what was lost was the value, not of 22 days in August 1920, but of 22 days in April 1921, and that there was no evidence of the value of these latter days. But the days which were actually lost by detention were the 22 days in August 1920, not 22 days in April 1921. It is necessary to inquire what was the amount of loss thereby entailed, and for that purpose it might be necessary to look forward to April 1921, when the lost time could first have been profitably utilised in earning

freight not already secured by the current contracts. But that does not obviate the fact that the days of actual detention were in August 1920. Instead of adducing evidence upon the matter the defenders have been content to concede that the value of each of these days must be taken at £531 of net profit. I do not think that the Court can now go behind this concession. Accordingly I am of opinion that under this head the reclaiming note fails.

The second point, I confess, occasions me serious difficulty. There was a defect in the propeller of the "Vitruvia" during the period of her detention, which it was proper to remedy before she put to sea. In these circumstances the defenders argue that it was not proved that they were responsible for her detention or for loss thereby occasioned. The first answer which the pursuers make to this turns upon a contention in law. The vessel, they say, went to Glasgow and was laid up there for the repairs for which the defenders are responsible. In these circumstances it does not matter what subsequently emerged, or whether she could have been earning freight or not irrespective of the necessity of these repairs. I should be very reluctant to be constrained to hold that this contention was in accordance with law. The pursuers' claim is for damages. They must prove loss of freight, not necessarily actual, but at all events potential. I cannot see how they could claim to have done so if the defenders had succeeded in proving that, irrespective altogether of anything for which the defenders were responsible, the vessel could not have been earning freight during the period of detention, and that therefore no freight was lost.

This consideration, however, does not exhaust the matter. There is a measure of obscurity about the facts which renders it impossible to deal with the case as raising the clear cut issue in law which I have indicated. The case for the defenders is this. During the whole period of detention the vessel was *de facto* unseaworthy and could not have been earning freight. This is *prima facie* conclusive against any suggestion of loss by detention whilst in this condition. The ship having continued in this condition until September the onus is upon the pursuers to show that this unseaworthiness could have been remedied without delay but for the repairs for which defenders were liable, and this they have failed to do. As it appears to me this contention is not one that can be brushed aside. The necessary repair was a slight one, but it involved dry-docking, and that cannot be secured any day. I understand, however, that your Lordships are all of opinion that the alleged matter of fact upon which this argument proceeds is not satisfactorily established. The vessel might, in the condition in which she was in when she entered the Glasgow docks, have made out her voyage, and by timeous arrangements for dry-docking on her return to Europe any appreciable delay might have been avoided. In view of the statements by representatives of the pursuers that they would not have sent the ship to sea without remedying the defect, I should have difficulty in giving effect to this view of the matter if the defect had been discovered before the ship was diverted from her usual tenor to come to Glasgow for repairs. But *non constat* that but for this diversion she would not have been well on her next voyage before the fact that a nut was loose was discovered, and would have made out this voyage successfully. In view of this consideration I acquiesce, though not without a measure of doubt, in the conclusion at which your Lordships have arrived, that this ground of defence is not substantiated.

The third matter concerns the claim for interest on the damages under their different heads. By the common law and practice of Scotland interest does not run upon an illiquid claim for damages. It is said that whereas the law of England is the same, a distinction is made as regards damages in maritime cases. If I were satisfied that any satisfactory distinction could be drawn between maritime damages and other damages I should not be indisposed, for the sake of uniformity, to extend to Scotland a special rule of practice in maritime causes which was shown to obtain in England. I am unable, however, to find any distinction which the Court could recognise as enabling it to award in maritime causes generally such interest as is here claimed without disregarding the general rule of our law. I recognise, however, that a claim in respect of payment of an account for repairs when neither the extent of the repairs necessary nor liability for them is disputed approximates to a liquid claim, and accordingly I concur in the conclusion reached by your Lordships on this matter.

The Court varied the interlocutor of the Lord Ordinary by deleting the words "with interest thereon at the rate of five per cent. from 17th February 1921," and by substituting therefor the words "with interest on £1270, 14s. 10d., part of said sum of £16,030. 13s. 11d., at the rate of five per cent. from 17th February 1921, and with interest at said rate on the balance of said sum of £16,030, 13s. 11d. from 19th July 1922," and with that variation adhered.

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