I would only desire to say further, that the opinion of the two learned Lords of the Court of Session who took a different view of the case from the majority of the Second Division appears to have been influenced a good deal by the state of possession which is proved to have existed in this case—the fact, in other words, that from 1865 to 1879, after the theatre referred to in the disposition of 1858 was reduced to ashes, these rentallers had for a long period of years enjoyed the right of admission as fully and as freely as if the right had been given to them under the deed. But, my Lords, it humbly appears to me that these facts as to the possession cannot legitimately be taken into consideration in construing these deeds. If the deeds had been defective in any solemnity required by law—if they had been imperfect in execution—these facts might have been referred to as perfecting the deeds; and if there had been any ambiguity, such as has occurred in this case in regard to the right which was implied in the right of free admission—whether it involved a right of booking or not—I think these circumstances might have been legitimately referred to to explain the ambiguity. But when you have deeds like these—probative deeds which embody the whole contract and obligations of the parties—it appears to me to be entirely out of the question to import possession for such a time—a possession which conflicts with the first construction of the deeds themselves.

I therefore concur with your Lordships in the judgment which you propose.

Interlocutor appealed from affirmed and appeal dismissed with costs.

Counsel for Appellants — Solicitor-General (Balfour)—Benjamin, Q.C. Agents—Simson & Wakeford and J. & J. Ross, W.S.

Counsel for Respondents — Solicitor-General (Herschell) — Kay, Q.C. — Rhind. Agents — Andrew Beveridge and William Officer, S.S.C.

Thursday, April 7.

(Before Lord Chancellor Selborne, Earl Cairns, Lord Penzance, and Lord Blackburn.)

LORD BLANTYRE *v.* CLYDE NAVIGATION TRUSTEES.

(*Ante*, March 5, 1880, vol. xvii., p. 476, 7 R. 659.)

River—Operations on Alveus—*Clyde Navigation Consolidation Act* 1858, *secs.* 76 *and* 84.

Held (*aff.* judgment of the Court of Session) that a proprietor whose right of property in the foreshore had been judicially determined, was yet not entitled, looking to the powers given to the Clyde Navigation Trustees by Acts of Parliament, to interdict them from dredging on the foreshore, all questions as to claims for compensation being reserved.

This case was determined in the First Division of the Court of Session on March 5, 1880, and is reported *ante*, vol. xvii., p. 476, and 7 R. 659. The application originally made to the Court of Session was for the object of interdicting the Navigation Trustees from removing soil or dredging upon certain portions of the river Clyde. The terms of the clauses of the Act of Parliament on which the respondents relied in defence, and the respective rights of parties in the ground in question, will be found in the former reports. The Lord Ordinary (Young) and the First Division of the Court having refused the application for interdict, the complainer appealed to the House of Lords.

At delivering judgment—

Lord Chancellor—My Lords, the question in this case arises upon the construction of an Act "to consolidate and amend the Acts relating to the River Clyde and Harbour of Glasgow," passed in 1858, by which a series of earlier statutes as to the same river and harbour was repealed. The original Act passed in 1758, as explained and amended in 1770, empowered the predecessors in title of the respondents to "cleanse, scour, deepen, and enlarge, or straighten and confine the said river and channel thereof, or any part or parts of the same" (within certain defined limits), "and to dig and cut the soil, ground, or banks of the said river, and soil, sand, and gravel in the bed thereof." These operations were to be carried on until the river and harbour should throughout its course within the prescribed limits have attained a minimum depth, which was from time to time increased, till in 1840 it was fixed at 17 feet at neap tides. No consent of any proprietor who might be entitled to any estate or interest in any part of the bed or foreshore of the river which might be affected by them was required for the exercise of these powers. In 1825 the authorities were enabled (in enlargement of their former powers, and still without requiring any consent) to "dredge, cleanse, and scour by machinery worked by power of steam, or otherwise, the said river and bed or channel thereof; to remove all sand-banks or shoals which might obstruct the navigation, and to erect and construct such new works as should seem to them proper and expedient for directing the stream of the river; for removing obstructions to the course of the tide; for bringing up a greater quantity of tide-water, and for making, continuing, maintaining, and securing the navigable channel of the said river, at least of (the prescribed) depth, and of as great width as might be found expedient for enabling vessels resorting to the harbour of Glasgow to pass each other with safety and facility." From the beginning power was given to make locks, dams, weirs, jetties, walls, &c. The earliest Act which authorised the acquisition by purchase of lands for permanent works connected with the navigation was that of 1825. A wet dock, wharf, and other specified works, according to maps and plans, were authorised in 1840, to which others were added in 1857. For these compulsory powers to take land were in 1840 for the first time given. All the Acts from 1758 downwards provided for compensation to the owners of lands, &c., for any damage to be done to them by the construction of authorised works, and generally by "any work, matter, or thing to be done by authority, or in pursuance of the Acts."

The appellant (Lord Blantyre) is the owner of the estate of Erskine, including the foreshore of the river Clyde for a considerable distance on

the south side of the river, within the prescribed limits. Part of the foreshore belonging to him was included in the plans and sections referred to in the Acts of 1840 and 1857, or one of them, which showed a retaining wall, the construction of which on that foreshore was authorised, but which has never (as I can understand) been built. In the Acts of 1825 and 1840 special clauses for the protection of the Erskine estate were inserted, whereby, as to certain works by which that estate might have been affected, the powers conferred by these two Acts were made conditional upon the consent of the proprietor. Both these clauses, however, were qualified by provisoes authorising the trustees of the navigation (without any consent) "to deepen the river by dredging the bed or channel thereof" (within the protected limits) "by machines worked by the power of steam, or other machinery."

This (shortly stated) having been the effect of the legislation before 1858, the 3d section of the Act of that year repealed all prior Acts subject to its own provisions. And the present question is, whether under this Act of 1858 the respondents, the trustees of the navigation, have power without Lord Blantyre's consent to continue their dredging, deepening, and widening operations in the bed or channel of the river adjoining the Erskine estate, so as to increase the depth of the navigable channel to the extent of 17 feet at neap tides, within part of the area of the foreshore belonging to Lord Blantyre, causing the water of the river to flow and remain at all times of the tide over parts of the bed or channel which were previously left dry during some part of every twenty-four hours at all ordinary tides?

The preamble of the Act of 1858 recites that "the great and continued increase of the shipping and trade of Glasgow, consequent on the improvement of the river and harbour, rendered it necessary that in conformity with the provisions of the recited Acts the navigation should be further enlarged and improved, and additional accommodation afforded in the harbour," for which purposes increased rates were to be imposed on vessels and goods, and that "it was also expedient that the said several Acts should be repealed and their provisions consolidated and amended."

The only sections of this Act to which I think it necessary now to refer are the 73d, the 76th, and the 84th. Unless the powers in question are re-enacted by these sections in the respondents' favour, there is nothing else to confer them.

The 73d section transfers to and vests in the respondents, *inter alia*, "the whole undertaking" of the former trustees.

The 76th section defines "the undertaking" so transferred, and says that (subject to the provisions of the Act, and to the effect of any previous agreements or conveyances) it "shall, in terms of the recited Acts, consist of the deepening, straightening, enlarging, widening or confining, dredging, scouring, improving, and cleaning the river and harbour until a depth of at least 17 feet at neap tides has been attained in every part thereof, the altering, directing, or making the channel of the river through any land, soil, or ground, part of the present or former course or bed of the river?" and other things which it is not necessary to enumerate in detail, but which include the erection of jetties, banks, walls, &c., and the construction and completion of the wet docks, tidal basin, and other works shown and described in the plans and sections referred to in the repealed Acts of 1840 and 1857, and thereby authorised to be made and maintained.

This is undoubtedly a singular and very inartistic manner of re-enacting by way of consolidation the powers contained in and conferred by the repealed Acts; but the preamble shows that it was the intention of the Legislature (subject to such amendments as were thought requisite) to do so, and it is not otherwise done. The words "in terms of the recited Acts" cannot indeed amount to a re-enactment of all that had been repealed, but they do refer to, and by reference incorporate, so much of the repealed Acts as when examined is found to describe and define the powers and authorities meant to be transferred to and vested in the respondents as part of the undertaking. Some of these, and particularly the powers of "deepening, straightening, enlarging, widening, confining, dredging, scouring, improving, and cleansing the river," until the prescribed depths should have been attained in every part thereof, and the "altering, directing, or making the channel of the river through any land, soil, or ground," being part of its "bed or course," were by the earlier Acts conferred upon the predecessors of the respondents without contemplating or providing for the purchase or taking of any land; while others (those relating, *e.g.*, to the construction of docks, &c.) were conferred by later Acts in the manner usual when lands must be acquired either compulsorily or by agreement. The effect of these words of reference is, in my opinion, that both these classes of powers were continued to the respondents as if they had been given anew "in terms" of the repealed Acts. It follows that the respondents have now the former class of powers (being those of which alone the exercise is in question on this appeal) as the former trustees had them, *i.e.*, without limit of time and without need of any purchase or taking of land as the condition of their exercise.

I am confirmed in this conclusion by the 84th section, which repeats in the very terms of the corresponding clause in the Act of 1840 the special protection given by the 45th section of that Act to the appellant's Erskine estate and also to certain lands of other proprietors, ending, however, with the following qualification of that protection by way of proviso:—"Provided that it shall be lawful for the trustees to deepen the said river by dredging the bed or channel thereof within the said limits by machines worked by the power of steam, or other machinery, to the extent authorised by the said recited Acts and this Act." I do not see how the present appeal could be determined in the appellant's favour without contradicting this proviso.

It was contended (as I understood the argument) for the appellant that all these powers were, indeed, granted by the Act of 1858 to the respondents, but only in this way, that the respondents must (if they could) acquire the land which (by reason of their dredging, deepening, or widening operations) would cease to be foreshore, from the appellants and any other owners of the foreshore, under the provisions for taking

land by agreement contained in the Lands Clauses Act, incorporated with the Act of 1858 by section 4.

Such a power, however, would be dependent entirely on the consents of the appellants and the other foreshore proprietors, which they could not be compelled to give. The proviso at the end of the 84th section must, from the antecedent context, necessarily mean that these particular operations might be carried on in the bed or channel of the river adjoining the Erskine estate without the appellants' consent. The compulsory powers of the Lands Clauses Act were not incorporated with the Act of 1858, except for certain special purposes not extending to these operations; and even as to these special purposes they were incorporated only for less than two years. It was not contemplated by any of the repealed Acts (as I read them) that the former trustees should "purchase" or "take" any land in the channel or bed of the river, which by reason only of their dredging, deepening, or widening operations might be permanently covered with water having before formed part of the foreshore at low tide; much less that they should have no power to carry on such operations at all unless they did so, what was not necessary for this purpose under the former Acts is not in my opinion necessary under the Act of 1858.

It was insisted that according to this view the appellant would practically be deprived of part of his foreshore without compensation, and that this could not have been the intention of the Legislature. To that argument I am unable to accede. If the former Acts did not cover by the provisions as to compensation contained in them this particular kind of damage, there would be no reason to expect that the Act of 1858 would do so. If they did cover and provide for it, it may well be that the effect of the 76th section of the Act of 1858 is not to make these powers absolute and unconditional which were previously conditional upon compensation being made for damage done, but that the reference to the "terms of the recited Acts" may be sufficient to preserve the condition as well as the power. There may also possibly be questions as to the effect of compensation clauses in the Harbours Clauses Act and the Commissioners Clauses Act of 1857, both which are incorporated generally with the Clyde Harbour Act of 1858.

All these questions are (as the Lord Ordinary stated) left unprovided by the interlocutors now under appeal. It is not necessary, nor do I think it would be convenient, for your Lordships now to determine them, because however they might be decided, my conclusion on the particular question raised by the present appeal would still be the same. The interlocutors appealed from are in my opinion right, and I therefore move your Lordships that the appeal be dismissed with costs.

Earl Cairns—My Lords, I am of opinion that the Act of 1858, although it in form professed to repeal the catena of previous Acts which had been passed during a century for improving the navigation of the Clyde, yet preserved to the respondents by its re-enacting words the right to improve the navigation by doing the acts now complained of, without any obligation of obtaining the consent or purchasing the land of the appellants beforehand, whatever liability to subsequent compensation for damage it may have made or left them subject to. I have arrived at this conclusion with perhaps more difficulty than seems to have been felt by the Court below; but my grounds are, first, because the words of the enactment of 1858, referred to by the Lord Chancellor, though inartistic and inappropriate, are yet sufficient, looking to the whole scope and history of the legislation, to carry into the new Act the "terms"—by which I understand from the context, the "powers"—of the old Acts; secondly, because the contention of the appellants would absolutely paralyse, and possibly destroy, the great public work which it was the object of Parliament to effect, and is not to be adopted unless no other construction is possible; and thirdly, because the insertion of the 84th section of the Act 1858, for the protection of the Erskine estate of the appellants, would in my opinion be absolutely meaningless if the appellants were meant to be left in a position in which they could refuse their consent to allow any works whatever to be executed by the respondents on or over the *solum*. I agree that the appeal should be dismissed with costs.

Lord Penzance—My Lords, the respondents in the present appeal are the trustees of the Clyde Navigation, and as the public body invested by statute with the duty of maintaining and improving the navigation of that important river, have begun to remove, by dredging and carrying away in barges or punts, a portion of the soil on lands which it is admitted belong to the appellants, but which are situated below high-water mark at ordinary times, and which therefore form part of the river channel.

Commencing at a period of upwards of a hundred years since, statutes have been passed for the improvement of the navigation of the river Clyde. I do not think it will be necessary in the determination of this case for your Lordships to scrutinise very narrowly the precise provisions of these statutes, with the exception, perhaps, of the Act of 1840. They have all been repealed by the last Act of 1858, under which the present trustees were constituted; and it is the proper construction of that Act which must determine your Lordships' decision in the present case. But, speaking generally, it must be observed that by these statutes powers have been conferred from time to time on the trustees of the navigation to deepen and (within the limits of high-water mark) to widen, to an extent sufficient to accommodate the shipping, the navigable channel of the river by dredging and removing the soil, without any previous consent of the persons to whom the lands upon which the dredging operations might be performed belonged.

Provisions, no doubt, were introduced from time to time for compensation to the landowners, but their consent was in no instance rendered necessary.

And this could hardly have been otherwise. Where the growing trade of such a port as Glasgow was in question, it could hardly have been expected that the entire project of improving the navigation should have been left at the mercy of any person who happened to possess any portion of the soil under water at high tide, and who, by

refusing to have any portion of that soil removed, might have practically rendered the deepening of the navigable channel impossible.

The Legislature is in the perfectly well-known habit of dealing with such a matter either by way of pecuniary compensation, or, if the land itself is required to be taken and appropriated, by compulsory purchase.

The land here in question being land which is covered with water at high tide, and thus forms part of the channel of the river, is land not available for the ordinary uses of land; and it may well be that the Legislature thought that the injury done to it by removing part of the surface was one which might properly be met by a system of compensation. Be that as it may, the fact is, that from 1758 down to the year 1840, although every Act provided for works in the way of deepening and improving the channel of the river within high-water mark, and provided compensation in case of injury, no provision is to be found for requiring the consent of the landowners, and none for the compulsory purchase of their lands.

In 1840, no doubt, a larger scheme was set on foot, and received the sanction of Parliament. Two lines were drawn, enclosing a space wider in several places than the existing channel of the river, and consequently including at some points not only land lying within high-water mark, but land above and outside it, and powers were taken by the statute of that year to extend the existing channel of the river to the limits included within these two lines. This involved the absorption in some places into the water channel or the works connected therewith of what had always been dry land, and the permanent occupation in other places of land which did not belong to the trustees. The trustees were therefore invested for a limited time with power to "take, occupy, and use" any of the land falling within the lines marked out as before mentioned and specified in the schedule to the Act, "indemnification being always made to the owners, &c., of such land," &c. But the statute of that year was by no means in its enactments confined to the carrying out of this new and more extensive scheme, with the powers of compulsory purchase necessary for that purpose; for we find it enacted by section 11 that the trustees "are hereby empowered not only to execute and continue the several works authorised by the recited Acts" (and all the previous Acts are recited), but also to execute the "additional works" authorised by the Act.

The effect of this statute, therefore, was in the first place to keep alive and give a fresh authority to the preceding Acts for deepening and widening the channel of the river; and, in the second, to authorise the execution of a new scheme for greatly extending the channel of the river and constructing wet docks and other works in connection therewith.

I have called attention to the exact effect of this statute, because the main contention of the appellants is rested upon its provisions, inasmuch as the land now in question lies between the two lines drawn as the intended limits of the new river channel, and is found among these lands which are set down in the schedule of the Act as lands which the trustees had power to purchase.

In this condition of previous legislation (passing by one or two Acts which are not material) the Act now in force, the 21st and 22d Vict., cap. 149, was passed in 1858.

It was an Act to consolidate and amend the Acts relating to the river Clyde and harbour of Glasgow.

The preamble recites the former Acts, and then goes on to recite the "great and continued increase of the shipping and trade of Glasgow," and that it is "necessary that, in conformity with the provisions of the recited Acts, the navigation should be further enlarged and improved, and additional accommodation afforded in the harbour," and that it is expedient that "the former Acts should be repealed and their provisions consolidated and amended."

There can be no doubt, therefore, that the Legislature intended that the powers of the trustees should be rather enlarged than curtailed or withdrawn, which is a consideration not without importance, when your Lordships come to construe the enacting clauses by which a preamble of this character was succeeded.

The clause mainly in question is section 76. It is somewhat oddly framed. The mode adopted for conferring on the trustees the powers necessary for the execution of the work confided to them is by declaring that "their undertaking shall consist of," &c., &c., and then follows an enumeration of their different powers, functions, and duties.

Now, it is important for the purposes of the present case to observe that, quite independently of any reference to the former Acts, there is to be found among the matters of which the undertaking of the trustees is declared to consist "the deepening, straightening, enlarging, widening or confining, dredging, scouring, improving, and cleansing the river and harbour until a depth of at least 17 feet at neap tides has been attained in every part thereof." Also "the digging or cutting the soil on banks of the river or bed thereof, and laying the same on the most convenient banks of the river, and these "works, or such and so many of them as to them shall from time to time seem expedient, they are to carry on and complete."

In all this there is nothing said of the previous consent of the persons who may be the owners of the soil in those parts of the river in which the "dredging, &c., digging, or cutting of the soil" may take place. Nor would the necessity for such a previous consent be consistent with any practical measure for carrying out the useful objects to which I have already alluded, as declared in the preamble to be the objects for which the legislation was devised and intended.

Stopping, therefore, at this point, and reading this Act, without reference to the question how far the former Acts, although repealed, were intended to be kept alive by virtual re-enactment, I fail to see that the trustees have exceeded the powers conferred on them.

But I am further of opinion that according to the true reading of this Act it was intended by the introduction into section 76 of the words "in terms of the recited Acts," to declare that the powers and duties of which the "undertaking" was said to "consist" should be exercised and performed substantially in the manner, and subject to the restrictions, by the former Acts provided; and I adopt the expression of Lord

Hatherley in the case cited at the bar—the former Acts were intended to be "summarised" compendiously by the section in question.

The appellants indeed rely upon this view, and they use it in this way. They say the provisions of the Act of 1840 were thus kept alive, and then they say that under that Act the trustees had no power to touch their land unless they exercised the right which they possessed of purchasing the land outright.

But I have already pointed out that under that Act the trustees had power, in conformity with the provisions of the former Acts, to dredge, &c., within the channel of the river—that is, within high-water mark—without purchasing the land. In whichever way, therefore, the statute of 1858 is regarded, whether as an isolated enactment, unconnected with the previous Acts, or as an enactment intended to summarise and consolidate the previous Acts, the acts of the trustees are, I think, justified without the appellants' consent, and the judgment appealed from ought, I think, to be affirmed.

Lord Blackburn — My Lords, the river Clyde flows into the upper or eastern end of the Firth of Clyde, which is an arm of the sea. Glasgow is situated on that river, just where the tide ceases to affect it. Lord Blantyre and his predecessors are owners of the barony of Erskine, on both sides of the Clyde. Erskine lies below or to the west of the river Cart, which flows into the Clyde, and is both above and below Dumbuck, which is about the place where, in popular language, the river may be said to end and the firth to begin. Dumbarton is lower down, and Port-Glasgow and Newark Castle on the south, and Cardross on the north side of the Firth of Clyde, are some miles further west, and there the firth is so broad that in popular language the river has ended and it is part of the sea. All these places are mentioned in the different Acts relating to the river Clyde and the harbour of Glasgow, which were, by the 21st and 22 Vict. c. 149 (2d August 1858), meant to be repealed, and their provisions consolidated and amended in one Act, but that Act has been drawn in so unskilful a way that I am afraid, in order to understand it, it is necessary to construe the previous Acts just as if they were still in force. In this river, and in the firth into which it flows, like all places where the tide ebbs and flows, there is a line marking the boundary of that land which at ordinary low tide is covered with water, and in an inner line marking the boundary of that land which at ordinary high tides is covered with water, but not at low water. Lord Blantyre was, by a declarator, affirmed by this House in *Lord Advocate and the Trustees of the Clyde Navigation* v. *Lord Blantyre* (L.R., 4 App. Cases, 770), found to be proprietor of the foreshore or portion of land between high-water and low-water mark *ex adverso* of his land of Erskine, but subject always to any rights of navigation or other rights which the public may have over the same, and subject also to any rights conferred upon the trustees of the Clyde Navigation by their Acts of Parliament.

Lord Blantyre applied for an interdict to prohibit the Clyde Trustees from interfering in any way with the part of the foreshore, No. 131 in the book of reference referred to in 3 and 4 Vict. c. 118. The question is one of relevancy.

It appears by the statements of fact and answers that this is a part of the foreshore included in the declarator; it is several miles above or to the east of Port-Glasgow, and is above both Dumbarton and Dumbuck, and below or to the west of the Cart, and is in its present state under water for about eighteen hours out of the twenty-four. The Clyde trustees have begun to remove part of this plot, and avow their intention to remove more of it, until they have widened the navigable channel there to the width which in their opinion is expedient for enabling vessels resorting to the harbour of Glasgow to pass each other with safety and facility, and until the navigable channel so widened is deepened to 17 feet. They say that they have the legal power to do this without asking Lord Blantyre's consent. No question as to whether Lord Blantyre is entitled to compensation is raised; that will come hereafter. But one argument of the counsel for the appellant was, that on the true construction of the Acts the trustees could not under the Acts do what they proposed to do unless they first bought and paid for the spot, and that their power to buy without the proprietor's consent expired long ago. If this was well-founded, it was an answer; but I think, for the reasons I shall presently give, it was not well-founded. The Lord President contented himself with saying that what was going on in the way of operations for deepening the river was quite within the powers reserved or conferred by section 76 of the Act of 1858. Lord Shand observed that the operations entirely consist in the removal of soil by dredging, and for that purpose the trustees do not propose to take property permanently, or to occupy property permanently; and he says that if there were any doubts as to the effect of section 76 it would be entirely removed by section 84.

I have come, on looking at the matter carefully, to be entirely of the same opinion; but the ingenious arguments at your Lordships' bar convinced me that the drafting of the Act of 1858 was so very inartificial as to render it proper to inquire whether section 76 as framed really bore that meaning.

The first Act of 1758 (32 Geo. III.) may, I think, be passed by. It was never acted upon. By the next Act of 1770 (10 Geo. III., sec. 3) the magistrates of Glasgow are empowered "from time to time, and at all times hereafter, to make and keep the said river Clyde navigable from the lower end of Dumbuck ford to the bridge of Glasgow aforesaid, so as there may be at least seven feet water at neap-tides in every part of the said river within the bounds aforesaid, for ships, vessels, barges, and lighters, to come and go to and from the said city of Glasgow, and for that end to alter, direct, and make, or cause to be altered, directed, and made, the channel of the said river, through any land, soil, or ground (part of the present bed of the said river) between the lower end of Dumbuck ford and the bridge of Glasgow aforesaid; and to make, set up, and erect on both sides of the said river such and so many jetties, banks, walls, sluices, works, and fences for making, securing, continuing, and maintaining the channel of the said river within proper bounds for the use of the said navigation, as to the said magistrates and

council and their successors in office shall seem proper and convenient; and for that purpose to cleanse, scour, deepen, and enlarge, or straighten or confine the said river and channel thereof, or any part or parts of the same, within the limits aforesaid; and to dig or cut the soil, ground, or banks of the said river, and soil, sand, and gravel in the bed thereof, and to lay the same upon the most convenient banks of the said river, and to plant the banks on each side of the said river within the bounds aforesaid with willows or other shrubs for the safety or preservation of the said banks, and for preventing the same from being hurt or carried away by the said river, satisfaction being always made to the owners of the ground that shall be thereby damaged, as in manner hereinafter directed."

The Act of 1809 (49 Geo. III.), after reciting that "in consequence of the powers vested in the magistrates and council of the said city by the said recited Acts, the navigation of the said river has been greatly improved, and the channel deepened and cleansed, and the trade and shipping of the said river and city have of late greatly increased, and are increasing, and the ships and vessels belonging and trading to and from the port of Glasgow are now becoming more valuable and of larger dimensions, and by continuing the works now carrying on, and adopting others, the said river may still be further improved, and the channel deepened and enlarged," and that "it would be of great advantage to the merchants, traders, and inhabitants of the said city, and of the places adjacent, to the owners and masters of vessels navigating the said river, and to the country at large, if the said river was further improved, and the bed and channel thereof further deepened and enlarged" —enacts that the trustees, for the purposes of the before-recited Acts, shall be "empowered, not only to continue the works authorised by the said Acts, but also to carry on such new and additional works as they shall think proper, till such time as the said river is at least nine feet deep at neap-tide in every part thereof between the bridge of Glasgow and the castle of Dumbarton, for ships and vessels to navigate to and from the said city."

By the Act of 1825 the Clyde Trustees are empowered, "not only to continue the works authorised by the said Acts, in the manner and way therein described, but also to carry on and execute such new and additional works as they shall think proper, within the high-water mark at ordinary tides, between the bridge of Glasgow nearest the Broomielaw and a straight line drawn from the harbour of Port-Glasgow on the south to the village of Cardross on the north, till such time as the said river is at least 13 feet deep at neap-tides in every part thereof;" "and particularly to dredge, cleanse, and scour, by machines worked by the power of steam or otherwise, the said river and bed or channel thereof, to remove all sand-banks or shoals which obstruct the navigation, and to erect and construct jetties, and all other works authorised by the said Acts, and such other new works as shall seem to them proper and expedient for directing the stream of the river, for removing obstructions to the course of the tide, for bringing up a greater quantity of tide water, and for making, continuing, maintaining, and securing the navigable channel of the said river at least of the depth aforesaid, and of as great width as may be found expedient for enabling vessels resorting to the harbour of Glasgow to pass each other with safety and facility, reserving always to the proprietors of lands adjacent to the river all rights to soil acquired from the said river, or other rights competent to them at common law, satisfaction being always made to the owners and occupiers of the lands, fishings, harbours, roadsteads, tenements, or other heritages adjacent to or in the river or firth of Clyde, which may be injured or damaged by or in consequence of the said operations as in manner hereinafter directed: Provided also, and be it enacted, that it shall not be lawful for the said trustees, under the powers conferred by the present Act, to make or construct any jetties or other works on the south side of the said river along the estate and land of Erskine (without the consent in writing of the proprietor for the time being of the said estate in that behalf first had and obtained) between the ferry of Erskine and a point opposite Frisky Hall, nor shall it be lawful for the said trustees to make or construct works within the limits aforesaid, under and by virtue of the said recited Acts, save and except such as shall be absolutely necessary in order to deepen the said river to 9 feet at neap tides in every part thereof, in terms of the said recited Acts, and then only in the event of its being found impracticable to obtain the said depth of 9 feet by dredging, scouring, and cleansing the said river or channel by machines worked by the power of steam or otherwise, such necessity and impracticability to be determined by the opinion of two eminent civil engineers, one to be named by the said trustees, and the other by the proprietor for the time being of the said estate, and in the event of their differing in opinion, by a third engineer to be named by these engineers; provided always that it shall be lawful for the said trustees to deepen the said river by dredging, scouring, and cleansing the bed or channel thereof within the said limits by machines worked by the power of steam, or other machinery, to the extent of 13 feet, authorised by the present Act; reserving always to the proprietor of the said estate, in case such works shall be constructed, all claims for damages in manner directed by the said recited Acts or by this Act."

In 1840 a wider scheme was taken up, for making wet docks and other works, which would require the taking of lands, and a plan was prepared by an engineer marking what those works were to be, and what the navigable channel of the Clyde, both within high-water mark and above high-water mark, was intended ultimately to be, and compulsory powers for purchasing the necessary lands were given, but those powers were not to be exercised after 1848. I will read part of the Act obtained in 1840 with this object:—By section 11 the trustees are empowered "not only to execute and continue the several works authorised by the said recited Acts, but also, under the provisions and restrictions hereinafter enacted, to make," &c., "the additional works, upon, in, or along the river, and in connection with the said harbour, delineated or represented on the map or plan hereinafter mentioned." By section 44 the trustees are empowered to construct and carry on the several works for deepening, widening, and improving

the navigation of the said river and harbour mentioned in or authorised by the said recited Acts, or delineated or described on the said map or plan and sections, and authorised by this Act, until the said river and harbour, throughout every part thereof, shall have attained at least the depth of 17 feet at neap tides, for the safe and easy navigation of ships to and from the Broomielaw or harbour of Glasgow, and the wet dock and other works hereby authorised to be constructed." Section 45 is for the protection of the property of Erskine, belonging to Lord Blantyre, and the properties of Frisky Hall, Corsedelf, Auchentorlie, and Dumbuck, but with this proviso—"Provided always that it shall be lawful for the said trustees to deepen the said river by dredging the bed or channel thereof within the said limits by machines worked by the power of steam or other machinery to the extent hereby authorised."

Now, pausing here, I think it clear from 1848 till further legislation the position of the Clyde Trustees was this — they had powers from time to time to widen and deepen the navigable channel of the Clyde between high and low water mark till it had attained the depth of 17 feet and it was "of as great a width as might be expedient for enabling vessels resorting to the harbour of Glasgow to pass each other with safety or facility." There was no limit as to the time within which this power was to be exercised, and no consent on the part of those interested in the land lying below high-water mark was required, but satisfaction was to be made to the owners of heritages adjacent to or in the river or firth of Clyde which may be injured or damaged by or in consequence of the said operations. And not only were such portions of the lands of Erskine as lay below high-water mark within this general power, but in the clauses introduced for the protection of the Lords Blantyre and others provisoes were introduced expressly declaring that these powers should be exercised there. The trustees had also powers given them to purchase certain lands, including those below high-water mark, by consent, and they had formerly powers to purchase them compulsorily, but those last powers had expired in 1848. By an Act of 1867 fresh compulsory powers to purchase some of those lands were given, but those powers were to last only for three years. When the Clyde Trustees went in 1858 before Parliament for a further Act, the last thing which the Clyde Trustees could have wished was that the Legislature should take away these powers which they possessed to widen and deepen the navigable channel below high-water mark. And considering how useful and reasonable those powers were, how much good they had done, and how no hardship had ever been inflicted on anyone by their exercise, and reading the preamble of the Act of 1858, which, after reciting the previous Acts, and "that the great and continued increase of the shipping and trade of Glasgow, consequent on the improvement of the said river and harbour, renders it necessary that, in conformity with the provisions of the recited Acts, the navigation should be further enlarged and improved, and additional accommodation afforded in the harbour, and whereas it is also expedient that the said several Acts should be repealed and their provisions consolidated and amended," I think it is not too much to say that the last thing the Legislature could have wished to do was to take away those powers; but the Act of 1858 has been drawn with such unlucky want of skill as really to afford plausible ground for the argument at your Lordships' bar, that whatever was meant, the Act as passed expresses an intention to take away those powers.

It is a singular instance of the hap-hazard way in which the Act has been framed that the clearest and most explicit declaration of the intention of the Legislature to preserve those powers is contained in the proviso at the end of section 84, which is a re-enactment of the 45th section of the Act of 1840, for the protection of the properties of Erskine, the properties of Frisky Hall, Corsedelf, Auchentorlie, and Dumbuck, "provided that it shall be lawful for the trustees to deepen the said river by dredging the bed or channel thereof, within the said limits, by machines worked by the power of steam or other machinery, to the extent authorised by the recited Acts and this Act." After repealing, by section 3, the recited Acts, "subject to the provisions of this Act," and incorporating the Lands Clauses Consolidation Act of Scotland and other general Acts, with modifications, we come, in order to see what those alluded to in section 3 are, to section 76. As I read it, the draftsman has here lumped together eight different matters. For some the powers to take lands compulsorily would be requisite; for some those powers are not required. I will read this curious piece of draftsmanship in an abbreviated form. "The undertaking of the trustees" shall, "in terms of the recited Acts," "consist of the deepening, widening, or confining, dredging, improving, and cleansing the river and harbour, until a depth of at least 17 feet at neap tides has been attained in every part thereof"—that is one object; "the altering, directing, or making the channel of the river, through any land, soil, or ground, part of the present or former course or bed of the river"—that is a second object; "the forming and erecting on both sides of the river of such jetties, &c., for making and maintaining the channel of the river within proper bounds, as the trustees shall think necessary"—that is a third object; "the digging or cutting the soil or banks of the river or bed thereof, and laying the same upon the most convenient banks of the river"—that is a fourth; "the cleansing, scouring, and opening any other streams, brooks, or watercourses which now fall into the river, the digging and cutting the banks of the same for improving the navigation of the river, and the digging, removing, carrying away, and using such earth and other materials therein upon or out of the said land as the trustees shall think fit, either for improving the navigable channel of the river or for bringing in any other streams, brooks, or watercourses to the river, or for bringing up a greater quantity of tidal water in the river"—that is a fifth; "the erection and maintenance of wharves, &c., the erection, construction, and mooring of such beacons and buoys as may be necessary in the harbour and in the river"—that is a sixth; "the construction and completion of the several wet docks, river dykes, and all other works and improvements shown and described in the several plans and sections referred to in the recited Acts, and thereby authorised to be made and maintained"—that is a seventh; and the repair, maintenance, and improvement of the whole

of the said works from time to time as may be found necessary or expedient, subject to the provisions of this Act and the Acts herewith incorporated, the trustees are hereby authorised and empowered to carry on and complete the whole or such and as many of the said works as to them from time to time shall seem expedient"—that is the eighth and last object. What is the meaning of the phrase "in terms of the said recited Acts?" It is, no doubt, a very extraordinary way of carrying out the announced intention of the Legislature to repeal the former Acts and consolidate their provisions, to say that the powers of the trustees for deepening and widening the river shall be just the same as if the repealed Acts were still in force; but if it does not mean that, what does the phrase mean? I think it does mean that, and so thinking I come to precisely the opinion much more briefly expressed by the Lord President.

I therefore think that the judgment should be affirmed and the appeal dismissed with costs.

Interlocutors under appeal affirmed and appeal dismissed with costs.

Counsel for Appellant — Solicitor-General (Herschell) — R. T. Reid. Agents—Grahame, Wardlaw, & Currey—J. & J. Ross, W.S.

Counsel for Respondent—Benjamin, Q.C.—Asher. Agents—W. A. Loch—Webster, Will, & Ritchie, S.S.C.

Thursday, April 7.

(Before Lord Chancellor Selborne, Lord Blackburn, and Lord Watson.)

CAITHNESS FLAGSTONE QUARRYING COMPANY *v.* SIR TOLLEMACHE SINCLAIR.

(*Ante*, 9th July 1880, 7 R. 1117.)

Writ—Holograph—Agreement Written by Factor to the Dictation of his Principal.

Held (*aff.* judgment of the Court of Session) that an agreement written by the factor for one of the parties in the presence of the other party to the dictation of the factor's principal, and unsigned, is not a valid holograph writ of the principal so as to constitute, when formally accepted and acted on, a completed contract between the two parties interested therein.

This case was decided by the First Division of the Court of Session on 9th July 1880, and is reported in 7 R. 1117. The defender having appealed against the interlocutor then pronounced, the House of Lords recalled it and remitted to the Court of Session to dispose of the merits of the case in a manner favourable to the contentions of the appellant. On the question as to the validity of the alleged agreement of 28th September 1878, however, the Lords who took part in the judgment concurred with the view taken in the Court of Session, and their views were thus expressed by Lord Watson:—"I am of opinion with all the Judges of the First Division that the missive of the 28th September 1878 is not a valid holograph writ. I do not doubt that a missive written and signed by a factor or agent professing to bind his principal is a probative holograph according to the law of Scotland, and that when duly accepted it will bind the principal if he gave authority, and will subject the writer in damages if he did not. It appears to me, however, to be sufficient for the decision of this point that Mr Logan who wrote the document was not in any sense a party to the negotiations on the 28th September, which resulted in its delivery to the respondents for their consideration and acceptance. These negotiations were conducted by the appellant in person, and it does not appear from the evidence that Mr Logan ever had or supposed he had any authority from the appellant to make such an offer. Even if Mr Logan had been the sole negotiator, acting in the appellant's absence and by his instructions, I doubt whether the writing would have been thereby validated. The general rule of the law of Scotland is that a holograph writing in order to be effectual must be subscribed by the writer."

Counsel for Appellant (Defender)—Solicitor-General (Herschell)—Webster, Q.C. Agents—Simson & Wakeford and Webster, Will, & Ritchie, S.S.C.

Counsel for Respondents (Pursuers)—Benjamin, Q.C.—Asher. Agents—W. A. Loch and Mackenzie, Innes, & Logan, W.S.

Thursday, April 7.

(Before Earl Cairns, Lord Penzance, and Lord Blackburn.)

COLTNESS IRON COMPANY *v.* COMMISSIONERS OF INLAND REVENUE.

(*Ante*, 7th January 1881, *supra*, p. 221.)

Revenue—Income-Tax—5 and 6 Vict. c. 35, secs. 60 and 100, Schedule D.

Held (*aff.* judgment of Court of Session) that in determining the amount of profit for any year upon which a mine-owner is to be assessed, he is not entitled to write off and deduct from the gross earnings of his mine a sum to represent the amount of capital expended on making bores and new pits that has been exhausted during the year.

This case was by an order of the House of Lords, dated 1st August 1879 (6 R. 617), remitted to the Court of Session for amendment. The Court of Session on January 7, 1881, pronounced judgment on the case as amended (*ante*, p. 211), and the case was again taken by appeal to the House of Lords.

At delivering judgment—

Earl Cairns—My Lords, this is an appeal from the First Division of the Court of Session, in which the appellants, an Iron Company at Coltness, contend that in rating for the property and income-tax they ought not to be assessed on a sum of £9027, a portion of the gross proceeds of their mines, for the year ending the 5th April 1879. The description of this sum of £9027 upon which the appellants contend that they