that it would not be safe to fix the distance at less than a mile. I wish to guard against its being supposed either that I think that in every case it must be necessary to fix so great a limit, or that in no case can it be necessary to fix a greater one. As far as I am concerned, I proceed entirely on the evidence in this particular case as applicable to this particular locality.

Lord Watson—My Lords, this appeal raises no question except one of fact.

Notwithstanding the minute and exhaustive criticism to which the evidence was subjected by the learned counsel for the appellants, I see no reason to doubt that it is sufficient to establish what the Court below have found, that the calcining operations of which the respondent complains have already caused appreciable damage to his property, and will, if permitted to continue, be productive of further and more serious damage.

The respondent is therefore entitled to decree of interdict; but I agree with your Lordships that the fact that injury has arisen from the ordinary process of calcining ironstone in open bings does not warrant an absolute prohibition against calcining by any process whatever at any future time. The interlocutor of the Court of Session, varied in the manner proposed by your Lordship, will in my opinion meet the justice of the case. It will give the respondent the measure of protection to which he is entitled, and will not prevent the appellants from availing themselves of the resources of science, and resorting to some method of calcination by which the noxious fumes which have hitherto been allowed to escape into the air may be recovered or destroyed. I had an opportunity of considering in print the judgment delivered by the noble and learned Lord on the woolsack, and I so entirely concur in the observations therein made with respect to the leading features of the proof, that it is unnecessary for me to make any comment upon it.

Interlocutor of 18th March 1881, granting the interdict, varied by adding after the words "within one mile of the pursuer's lands" the following words — "in the manner hitherto practised by them, or in any other manner whereby noxious vapour may be caused to pass over the pursuer's lands, or any part thereof, to the damage or injury of the pursuer's plantations or estate"—subject to that variation the interlocutors appealed from affirmed. Appellants to pay the costs of the appeal.

Counsel for Pursuer—Lord Advocate Balfour—Solicitor-General Herschell. Agents—Inglis & Allan, W.S., and Connell, Hope, & Spens.

Counsel for Defenders—Attorney-General Sir Henry James—Davey, Q.C.—Young. Agents—Hope, Mann, & Kirk, W.S., and W. A. Loch.

Wednesday, July 26.

(Before Lords Blackburn, Watson, and Fitzgerald.)

COUNTESS OF ROTHES *v.* KIRKCALDY WATERWORKS COMMISSIONERS.

(*Ante*, vol. xvi. p. 585, and 6 R. 974.)

Reparation—Property—Damage done by Flood-water—Liability of Statutory Commissioners— Damnum fatale—*Kirkcaldy and Dysart Water-Works Act* 1867 (30 *and* 31 *Vict. cap. cxxxix*).

Statutory commissioners were authorised by Act of Parliament to construct waterworks, reservoirs, &c., under various conditions and restrictions, and, *inter alia*, that they should make good to a proprietor of lands, through which a burn that had been intercepted to feed one of their reservoirs passed in its subsequent course, any damage caused by reason of "any bursting or flood or escape of water" from the reservoir. *Held* (*diss.* Lord Blackburn, and *rev.* judgment of the Court of Session) that the commissioners were liable for damages to the lands of the inferior proprietor occasioned by a flood coming from their reservoir, whether that flood was or was not due to the existence of the reservoir.

This case was decided by the Second Division of the Court of Session on June 5, 1879, *ante*, vol. xvi. p. 585, and 6 R. 974. That Division assoilzied the defenders, adhering to the judgment of the Lord Ordinary (Lord Rutherfurd Clark). Lord Justice-Clerk Moncreiff dissented from the judgment, and the pursuer now appealed to the House of Lords.

At delivering judgment—

Lord Blackburn—My Lords, the question in this case depends entirely on the construction of two lines in the 43d section of the Kirkcaldy and Dysart Waterworks Act 1867, but though it lies in so small a compass it is one on which there has been a difference of opinion in the Court below, and there is also one in this House.

The Act in question authorised the commissioners to impound the waters of an affluent of the Lothrie Burn in a reservoir, and thence by aqueducts and pipes and filtering works to carry a supply of water to the towns of Kirkcaldy and Dysart. It required them also to make a compensation pond called the Ballo reservoir on the upper part of Lothrie Burn, and store up the water in it for the purpose of supplying compensation water to those interested in the lower part of the Lothrie Burn. The position and size of this Ballo reservoir are fixed with precision in the Act, and it is required that the works shall be securely made, and that a waste weir fifty feet wide shall be provided for the Ballo reservoir, so that the commissioners were left no discretion as to how they were to make and maintain this reservoir. If there came a fall of rain so great as to more than fill the reservoir, the surplus water must flow over the waste weir and thence flow down into the Lothrie Burn. To do anything to hinder this would have been a breach of the duty imposed by the Act upon the commissioners. What happened was, that there was a very unusual fall of rain—as much as six

inches in three days—and the water flowed over the waste weir in a body 18 inches deep, and this quantity of water raised the Lothrie and produced a flood flowing from the reservoir certainly, though the works of the reservoir stood firm and the water did not rise so high as to flow over the embankment.

The appellants are owners of the lands on both sides of the Lothrie Burn up to a point 560 yards below the point where the water flowing from the Ballo reservoir joins the burn. The 43d section of the Act is in these terms:—"The commissioners shall be bound to make good to the said Countess of Rothes and her heirs and successors from time to time all damages which may be occasioned to her or them by reason of or in consequence of any bursting or flood or escape of water from any reservoir, aqueduct, or pipe or other work connected therewith which may be constructed or laid by the commissioners; and the right to claim payment of such damages and expenses shall not be lessened by the powers conferred by this Act as regards inspection and seeing to the sufficiency of the works, either during the construction or at the completion thereof, or by anything that shall have been done under or in consequence of these powers." I quite agree with the Lord Justice-Clerk below when he says —"Now, my Lords, my opinion is that the clause in the statute on which this case turns constitutes an obligation upon the commissioners as part of the consideration for obtaining the statutory powers which they had not and could not have had otherwise—constitutes an obligation of absolute protection against the things mentioned in that clause."

The whole question in my mind is—what are we to understand as being the things mentioned in that clause? If the word "flood" as there used means any flood whatsoever flowing from the reservoir, it is beside the question to inquire whether this was not more protection than Lady Rothes could reasonably ask for. She has in that view got it from the Legislature, and the decision of the Court below is wrong. But the words "bursting or escape of water from any reservoir, aqueduct, or pipe," &c., are things which can only occur when the works have in some way proved not sufficient, and the commissioners have failed in doing what they were directed to do. And if the word "flood" is to be understood as limited in the same way as the things which go before or come after a flood occasioned by the works proving defective, and is not to extend to a flood the damage from which would have had to be borne by the appellants if there had been no works, and which flowed as it did from the works being made and maintained in the very way in which the Legislature intended and, indeed, compelled the commissioners to make and maintain them, then the decision of the majority of the Court below was right.

I quite agree that no Court is entitled to depart from the intention of the Legislature as appearing from the words of the Act because it is thought unreasonable. But when two constructions are open the Court may adopt the more reasonable of the two. I do not think it is possible to add much to the mere statement of the case. It will strike one mind in one way and another in a different one. And knowing as I do that my two noble and learned friends who heard the case differ from me I should have said that they and the Lord Justice-Clerk, whose opinion they adopt, were probably right; but as three of the Scotch Judges who heard the case below took the same view as I do, I am confirmed in my opinion, and think it due to them to state what it is. The decision of this House will of course be in conformity with the opinion of my two noble and learned friends.

Lord Watson—My Lords, the only question which it is necessary that your Lordships should decide in this appeal appears to me to depend upon the just construction of a single clause in a local and personal statute, entitled The Kirkcaldy and Dysart Waterworks Act 1867.

The respondents, who are the commissioners incorporated for the purpose of executing the Act, are thereby empowered, *inter alia*, to impound and store up the waters of a small stream called the "Lothrie Burn" and some of its tributaries; and with that view to construct two ponds or reservoirs, the one named the Drumain and the other the Ballo reservoir. The Drumain reservoir, which is upon a tributary of the Lothrie, is intended for the supply of water to the burghs of Kirkcaldy and Dysart. The Ballo reservoir, which has been formed by damming up the Lothrie Burn itself, is intended to compensate the owners and occupiers of lands, mills and manufactories, and all other persons interested in the waters of the burn and its tributaries and affluents and the streams into which they flow, for the water abstracted by means of the Drumain reservoir and the pipes which connect it with Kirkcaldy and Dysart. The statutory obligation of the respondents is to cause to be discharged from the Ballo reservoir into the channel of the burn 750 gallons or 120 cubic feet of water per minute during each of the twenty four hours of every day of the year.

The Lothrie Burn, at a point in its course from half to three-quarters of a mile below the Ballo reservoir, enters the Leslie estate, belonging to the appellant the Countess of Rothes, and runs through it for about three miles. There are no materials in the present case for determining whether the appellant as an inferior heritor could have objected to the construction of the Ballo reservoir by the proprietor of the *solum* provided he had merely filled it in time of flood and had thereafter permitted the natural flow of the burn to descend undiminished in volume. I see no reason, however, to suppose that the works which the respondents are authorised to construct could of themselves, and apart from the uses made of them by the respondents, cause any alteration of the natural flow of the Lothrie Burn within the Leslie estate. But the appellant had an undoubted legal right to prohibit the abstraction of a single drop of water for the use of Kirkcaldy and Dysart, as well as any interference with the natural flow of the burn through or over the Ballo reservoir. The appellant accordingly appeared and procured the insertion of various clauses in the Act, designed for the protection of her interests, to the terms of which it is necessary to advert.

First of all, permission is made (section 40) for the construction of the works in a solid, sub-

stantial, secure, and workmanlike manner, and the appellant and her heirs and successors are authorised to insist on an inspection of the works not only during their execution but at any time after their completion, by an engineer mutually agreed on, or failing agreement, to be appointed by the Sheriff of the county. On the other hand, the respondents are laid under an obligation to execute the works, as such engineer shall direct, "so as to secure safety," and specially to provide a waste weir fifty feet wide for the Ballo reservoir. The purpose of these enactments obviously is to protect the appellants against the consequences of the embankments or sluices giving way, the function of the waste weir, or bye-wash as it is also called in these proceedings, being to relieve the embankments from water pressure which might endanger their stability. Then follows the clause (section 43) with which we are immediately concerned. It provides that the respondents shall be bound to make good to the appellant and her heirs and successors, from time to time, "all damages which may be occasioned to her or them by reason or in consequence of any bursting or flood or escape of water from any reservoir, aqueduct, or pipe or other work connected therewith, which may be constructed or laid by the commissioners." By another clause (section 49), the terms of which I shall have to notice hereafter, it is enacted that the compensation payable under section 43 shall be settled by arbitration, in manner provided by the Lands Clauses Consolidation (Scotland) Act 1845.

On the night of the 20th or morning of the 21st August 1877 there occurred what the respondents on record describe as "a spate of extraordinary violence" in the upper part of the Lothrie Burn, which entered the Ballo reservoir, and thence flowed, by means of the bye-wash and compensation sluice, down the channel of the Lothrie Burn. The action in which this appeal is taken was instituted by the appellant, on the allegation that the spate in question occasioned great damage to her property, and concludes (1) to have it found and declared that the respondents are liable to make good such damage, and (2) to have them ordained either to enter into a statutory arbitration in order to fix its amount, or to pay the amount as ascertained in the course of the action. It appears from the judgment delivered by Lord Ormidale, and it is not disputed, that in the Court below, or at all events in the Inner House, "both parties concurred in stating that it was their desire to have the dispute between them settled in this Court under and in terms of the second alternative conclusion of the summons, in place of an arbitration under the Lands Clauses Act." Upon that agreement of parties I have only this observation to make, that it amounts in my opinion to nothing more than a waiver of their right to demand a statutory reference, and that the effect of the waiver is to confer upon the appellant the right to recover these damages by ordinary legal process. The respondents' contention that the effect of the waiver was to put the case as regards damages *extra cursum curiæ* and make a reference to the Court of Session, appears to me to be groundless; but that is a matter of little consequence in the view which I take of this case.

The appellant in the Court below maintained that the respondents were liable for the damage occasioned to her property by the spate or flood in question upon these three grounds—(1) that the respondents are, by section 43 of the statute, made liable for damage occasioned by a flood coming from the Ballo reservoir, whether such flood be due to the existence of the reservoir and its works or not; (2) that assuming no such statutory liability to exist, the flood was materially increased and its injurious effects aggravated by the respondents' works; and (3) that the whole or a material part of the damage was due to the failure or neglect of the respondents to regulate properly the quantity of water in the reservoir, and its outflow from the compensation sluices. The Lord Ordinary—whose judgment was adhered to by Lords Ormidale and Gifford, the majority of the Second Division (the Lord Justice-Clerk dissenting from their conclusion as to the first)—rejected all these contentions and assoilzied the respondents. The appellant at your Lordships' bar did not insist in the third proposition maintained by her in the Court below; and I am of opinion with your Lordships that the second, which involves a pure question of fact, was rightly negatived by the Judges of the Court of Session. That leaves for consideration only the first proposition, which raises a question of law upon the construction of the 43d section of the Act of 1867.

The Lord Ordinary, and the Judges who agreed with him, were of opinion that the provisions of the clause did nothing more than protect the appellant from injuries which she would not have suffered if the reservoir had not been made. That result, as it appears to me, can only be reached by reading the word "flood" as it occurs in the clause in a restricted sense. In my opinion "flood" or "flood of water" from any reservoir, aqueduct, &c., are terms which, according to their primary and natural meaning, include a flood coming from the reservoir although it had its origin in a stream or streams by which the reservoir is fed, and will therefore, if they are to be taken in that sense, apply to the flood of August 1877, in respect of which the appellant claims compensation. No doubt the words may have a narrower meaning imposed upon them either by the immediate context, or by its appearing that to give effect to them in their wide sense would lead to results so unreasonable or inconvenient as to be presumably inconsistent with the main objects of the Act. It was argued for the respondents that there are considerations to be found in the present case which tend on both these grounds to limit the general meaning of the expression "flood" occurring in section 43. First of all, it is said that the meaning of the word must be determined by the company in which it is found, and that being associated with bursting or escape of water from a reservoir, aqueduct, or pipe it must be taken to signify a flood *ejusdem generis* with that occasioned by the bursting of a reservoir or the escape from a reservoir of water which ought to have been retained in it. To that reasoning I cannot assent. The clause in question, so far as regards the causes of damage which the respondents are to make good, is framed on the principle of enumeration, the three causes enumerated being "bursting of water," "flood of water," and "escape of water." It is only by so reading the enumeration that the

grammatical connection of the sentence can be preserved. Now, what I understand to be the object of enumeration is to set forth in detail things which are in themselves so distinct that they cannot conveniently be comprehended under one or more general terms, and there is in my opinion no *a priori* presumption that the things enumerated are all of them of the same kind. When a specific enumeration concludes with a general term, that term is by a well-known canon of construction held to be limited to *alia similia*. The respondents' argument would have been of great force if the enumeration had been of bursting of water, escape of water, or "other floods" from the reservoir, but as it stands the word "flood" is an independent member of the enumeration, and I can find nothing in the language of the section which fairly leads to the implication that the ordinary meaning of the word is to be limited by reference to the expressions "bursting" and "escape of water."

Again, it is said that by their Act the respondents are not only bound to give a constant supply of compensation water, which implies the necessity of storage, but are also bound to construct and maintain a waste weir, and to allow all surplus water to escape by it into the Lothrie Burn; and, moreover, that very large powers are conferred upon the proprietors of the Leslie estate with the view of enabling them to enforce these obligations. These statutory provisions, it is argued, are inconsistent with the idea that the Legislature intended the respondents to exercise any control over floods arising in the Lothrie Burn and its affluents above the Ballo reservoir. To my mind that is not a self-evident proposition. A waste weir is necessary in order to relieve the embankments of the reservoir from a pressure of water which they were not constructed to bear, and to guard against the serious consequences which might otherwise have resulted from their giving way under that pressure. But notwithstanding the existence of the waste weir or bye-wash, the respondents have unquestionably the means at their command of very largely regulating and controlling the flow of water in the channel of the burn below the reservoir, and for aught that appears to the contrary in this case, they may be able practically to prevent flooding except on the occasion of rainfall so exceptional as to amount almost, if not altogether, to a *damnum fatale*. I am unable therefore to assume that the Legislature in giving the respondents such powers of regulation and control cannot have intended to make them liable for all kinds of flood coming from the reservoir, though such is the natural import of the language employed, simply because the Legislature has also taken precautions to secure the stability of the respondents' works.

Last of all, it is contended by the respondents that to give the word "flood" its ordinary meaning would lead to results so unreasonable that the Legislature cannot be supposed to have used it in that general sense. The argument might be of some weight if your Lordships were in a position to hold that it has a foundation in fact. But such statutory provisions as those of section 43, occurring in a local and personal Act, must be regarded as a contract between the parties, whether made by their mutual agreement or forced upon them by the Legislature; and viewing them as a contract, I am quite unable to say that the advantage which the appellants obtain under section 43, according to their construction of it, as well as under the other clauses of the Act, constitute an excessive and unreasonable consideration for the benefits which the commissioners have derived from their being able to acquire by compulsion the appellants' right and interest in the water now taken from the Drumain reservoir to Kirkcaldy, and for the interference with the natural flow of the Lothrie Burn occasioned by the use made of the Ballo reservoir.

The language of section 49, which provides for the assessment of the damages for which the respondents are by section 43 made liable, appears to me to favour the construction for which the appellants contend. In section 49 their damages are described as "damages through flood or escape of water, or flooding or bursting of any of the reservoirs authorised by this Act, or works connected therewith." I do not think the "flooding of a reservoir" can arise from causes *ejusdem generis* with the bursting of a reservoir or the escape of water which ought to be detained in the reservoir. The effect of these causes is to drain or empty the reservoir, whereas the "flooding of a reservoir" must be due to some cause which fills it beyond its capacity so that it overflows.

I am therefore of opinion that the interlocutors appealed from ought to be reversed, and the cause remitted to the Court below, with a declaration that the appellants are entitled, by virtue of the provisions of the Kirkcaldy and Dysart Waterworks Act 1867, to compensation for any damage occasioned to the property of the appellant the Countess of Rothes by reason of the flood in question from the Ballo reservoir. I am also of opinion that the appellants ought to have their expenses of process in the Court of Session from and after the date of the interlocutor of the Lord Ordinary appealed against as well as the costs of this appeal, and I move accordingly.

Lord Fitzgerald—My Lords, the argument on this appeal finally eventuated in a single question, viz., What was the true construction of the 43d section of the special Act in reference to the extent of the liability of the defenders? For the pursuers it was contended that on the true interpretation of that section the defenders were bound to indemnify her for damages caused by a flood of water coming from the reservoir, however that flood of water may have been occasioned. The defenders, on the other hand, insisted that there having been no failure or insufficiency in their works, and no negligence or default on their part, they were not responsible for damages occasioned by a flood of water wholly attributable to natural causes, unless that flood had been in some way augmented by the reservoir. The Lord Ordinary was of that opinion, and the question is, whether he was correct in his view of the 43d section? If he was not, his interlocutor of the 3d December 1878 cannot be maintained.

We have now, therefore, to interpret the 43d section of this Act. There can be little difficulty in the plain, literal, and grammatical construction of the section, and I would read it thus—That the defenders "shall be bound to indemnify the pursuer for all damages occasioned by reason or in consequence of any bursting of any reservoir,

aqueduct, pipe, or other work connected therewith, or by reason of or in consequence of any flood or escape of water from any reservoir," &c. The language is clear and simple, and if on looking to the whole scope and subject of the enactment we find nothing to indicate a contrary intention, we are coerced to come to the conclusion that the pursuer's contention was well founded.

The terms of section 49 seem to me rather to support that view of the statute. The compensation for damages through flood or escape of water in section 49 obviously refers to the claims which may arise under section 43, and its language may be used to throw light on or to interpret section 43. The collocation of the words in section 49 is different, and its import is that the pursuer would be entitled to compensation for injury through any flood or any escape of water from or any flooding of any of the reservoirs.

It was alleged for the defenders that such a construction would be unreasonable, and that it ought to be limited to those cases of flood-water in which the reservoirs or works by their existence there increased or aggravated the flood; but it seems to me that to arrive at that conclusion we must interpolate words in section 43 which are not to be found in that section.

It was urged also that we should apply the rule *ejusdem generis* or *noscitur a sociis*, but that maxim is properly resorted to where otherwise there might be some opening for ambiguity. It would not, as it seems to me, aid us on the present occasion. If the language of the section is not clear, then the rule of interpretation *contra proferentem* seems to me to be specially applicable. The language of the section must be taken as that of the promoters of the Act.

They ask the Legislature to grant them large powers and privileges, and they propose to give in return to the individuals who may be affected certain rights and protection. They should have taken care to defend with accuracy the limits of their liability so that the parties whose rights they interfere with should not be misled. We are bound to put a construction on the section as favourable to the pursuer as the words of the section will fairly and reasonably bear, for the words are not hers but the promoters'.

It is obvious from the judgments in the Court below that the majority of the Judges were influenced by the supposed unreasonableness of the pursuer's contention. Thus, Lord Ormidale describes the "result" as one "so unreasonable and extravagant as not for a moment to be entertained." Lord Gifford describes it as "both unreasonable and unjust," and again, that "it would be against all equity," "so that it could not have been the intention of the Legislature to make the defenders liable for an injury with which they had nothing whatever to do." If the result would be unjust, unreasonable, and inequitable, then we ought not to adopt the interpretation unless the language of the promoters is so clear as to be coercive. I propose to apply the test of unreasonableness having regard to the surrounding circumstances at the time of the passing of the Act to be collected from the Act itself. I do not propose for a moment to refer to the evidence, but I will take the surrounding circumstances as they appear from the Act itself, and from the plans, sections, levels, and elevations there referred to.

Now, first, this is "an Act for the better supplying with water the Parliamentary burghs of Kirkcaldy and Dysart, and suburbs and places adjacent, and for other purposes," and it is not confined to providing water for the population merely, but it is also for trade and manufactures. In order to carry out those objects the commissioners are first incorporated. Then, under section 35 we have an insight into the plans, levels, and elevations of the works to be constructed, and under section 36 the description of the works themselves leaves no doubt as to what is to be done. By section 38 the incorporated commissioners receive power from Parliament "to take, collect, and divert" the waters of the burn into their reservoirs, and there "to impound and store up the waters of the burn with its tributaries and affluents, and by means of their works to convey, appropriate, and use the said waters for the purposes of this Act." Their powers therefore are very extensive.

My Lords, those persons had in some respect to be guarded against. For instance, I presume from the insight given us by the plans here that the Lothrie Burn was an ordinary mountain stream, subject to sudden and considerable floodings quickly passing away. But I presume that it had also the ordinary characteristics of such a stream—that it had the means of relieving itself from the pressure of flood waters either by lateral cuts or by the natural elevation of the banks, enabling it, when the upper waters of the burn became flooded, to give itself a lateral discharge. But under the powers of this Act the character of that stream is to be totally altered; it is to be converted in fact into a canal, in which all the upper waters are to be collected—none are to be wasted or lost, but all are to be stored up in the Ballo reservoir. If the incorporated commissioners duly carried out their powers and works they would require every drop of that water, in the first instance, for compensation purposes, and afterwards for the larger purposes of the Act of Parliament; and I assume that they took proper means to secure every drop of water coming into the upper channel of this small river, so that none should be lost, but that all should be retained in the reservoir. It may be said in fact that the character of the upper river was entirely changed; it ceased to exist as a mere mountain stream, and it became a river entirely in the hands of the commissioners, who by virtue of their works were enabled to collect and keep and store up the entire water coming into the upper burn.

My Lords, when we look again below, the consequences are still more formidable, because you will find as part of the works to be established, and for the protection of the embankment, that there was to be a bye-wash or waste weir. That waste weir was to be at least 50 feet wide, and at an elevation of 60 feet above the channel, the bye-wash discharging through it, in flood times especially, a considerable amount of water. At a little more than 100 yards below it meets the ordinary channel of the Lothrie Burn and alters its character. But it is obvious from the description of the stream, and contrasting it with the discharging power of the bye-wash, that the stream in its natural state would be quite insufficient for the discharge of the waters which would be brought down into this large and formidable aqueduct. The natural result from that (and I

may call in aid a very large experience in arterial drainage cases) would be that the whole stream in its natural state being unequal to the discharge of the upper waters which are suddenly thrown upon it, the waters are piled up and are forced to discharge themselves, causing ruin on either side; and such would probably be the anticipated result of the works to be formed by the commissioners.

My Lords, under such circumstances, trying the question by the test whether it is reasonable or not, I should say that in the presence of such a probable state of facts indicated by the surrounding circumstances and by the terms of the Act—in the presence of a danger so formidable—it seems to me that it was not unjust or unreasonable for the pursuer to stipulate for a full and complete indemnity. She was to be deprived of all control and of all means of self protection, and might reasonably insist that the promoters should accept the whole responsibility and indemnify her for damage by floodwaters from the reservoir, no matter how caused.

The promoters in reply presented the 43d section—that is the indemnity which they offered. It has been sanctioned by Parliament, and I see nothing inequitable in it or in its interpretation. My Lords, such was practically the view of my noble and learned friend the Lord Justice-Clerk in the Inner House, and I entirely concur in his view.

Interlocutors appealed from reversed, and cause remitted, with a declaration that the appellants are entitled, by virtue of the provisions of the Kirkcaldy and Dysart Waterworks Act 1867, to compensation for any damage occasioned to the property of the appellant the Countess of Rothes by reason of the flood in question from the Ballo reservoir: Respondents to pay to appellants their expenses of process in the Court of Session from and after the date of the interlocutor of the Lord Ordinary appealed against, as well as the costs of the appeal to this House; Respondents also to pay to appellants any sum of expenses paid by them to respondents under the interlocutors appealed from.

Counsel for Pursuer—Davey, Q.C.—Webster, Q.C. Agents—Tods, Murray, & Jamieson, W.S., and Martin & Leslie.

Counsel for Defenders—Solicitor-General Asher—Benjamin, Q.C. Agents—John Clerk Brodie & Sons, W.S., and W. Robertson.

END OF VOLUME XIX.