which may turn out to be mere slanders, to be introduced, without the purpose either of following them out on the one hand, or of abandoning them on the other.

Lord Ardmillan — I have no hesitation in agreeing with your Lordship entirely on the first part of the case. I think it is very clear that the finality clause in the Montgomery Act has the force which your Lordship gives to it. I think that decrees obtained, though in point of fact in absence, are, by the force of the finality clause, to receive the effect of decrees *in foro*, which are pronounced by statute to be final. I therefore take the next step without any doubt,—that finality excludes all the grounds of action here excepting the last one mentioned. It is the policy of this Montgomery Act to give the utmost possible facility for appearance throughout the proceedings to the heirs. They have notices which are very minute; there is the laying of vouchers (which are very minute and elaborate, and must be carefully prepared) before the Court; there is consideration by the Court, and there is an opportunity to the heirs at every turn and every step of the proceedings; and that is all in order that when you come to the time that the decree is pronounced, which the Statute declares to be final, the door may be shut against opening up these matters again. I have no doubt therefore, with your Lordship, that all the objections, with the exception of the last one, are excluded now. On the last objection I have without much difficulty come to the same opinion with your Lordship. I think it has been well said that a person cannot be allowed to charge fraud by merely using the word fraud, and not alleging acts which imply fraud. There have been several cases in which a party has come into Court with a general averment of fraud, but has not alleged the particular conduct to which he attaches the character of fraudulent. The Court never allow that. You cannot scatter before the Court words of that kind. You must state what is the conduct to which the pursuer attaches the character of fraud. But, on the other hand, neither can a party come into Court and allege that which is fraud, and then escape from the responsibility which attaches to a man who makes a charge of fraud by saying,—"You knew the truth, and you alleged the falsehood; you intended to deceive the Court, you intended to deceive the heirs of entail; you succeeded in deceiving the Court, and in deceiving the heirs of entail; you did so by wilful deception and misrepresentation; but, because I do not use the word fraud, I do not incur the responsibility of making a charge of fraud." The Court cannot listen to that. If this pursuer does not charge fraud, he does not seriously charge the acts which he has here alleged. If he does charge these acts with the motive and the knowledge which he alleges, he makes a charge of fraud; and therefore I think that the finality clause does not protect against a conclusion for reduction on the head of fraud relevantly alleged; and that fraud is relevantly alleged here, excepting merely that the word is not used, and that that advised reticence (for we were told it was advisedly done) in refusing to characterise as fraud what is fraud or nothing, cannot avail the party. The party must make the charge, or he must withdraw the charge. No man can make a charge which implies fraud, and escape responsibility by refusing to give it the name.

Lord President—Then we recal the Lord Ordinary's interlocutor, which dismisses the action; repel all the reasons of reduction, except such as are founded on allegations that the decrees under reduction were obtained by the late Marquis of Breadalbane by means of fraudulent representations and fraudulent concealment, practised by the said Marquis and his agents; and appoint the pursuer to lodge, within eight days, a draft of an issue or issues for the purpose of trying the said last-mentioned reasons of reduction.

On the suggestion of the pursuer's counsel the Court gave ten days.

The pursuer lodged no issue, and after the meeting of the Court in May, stated that he did not propose to lodge any. The Court accordingly repelled the remaining reasons of reduction, and dismissed the action.

Agents for Pursuer—Adam, Kirk, & Robertson, W.S.

Agents for Defenders—Davidson & Syme, W.S.

## *Friday, May* 29.

### BLANTYRE *v.* CLYDE NAVIGATION TRUSTEES.

*Statute—Clyde Navigation Consolidation Act* 1858—*Construction — Interdict — Channel of River — Public Trust. Held,* on construction of 21 & 22 Vict., c. 149, that a riparian proprietor on the river Clyde was not entitled to an interdict against the Clyde Navigation Trustees, which would in effect compel them to lay the soil dredged by them in performance of their statutory duties, on the banks of the river *ex adverso* of the proprietor's lands, at such part as he might approve.

This was a note of suspension and interdict presented by Lord Blantyre, proprietor of certain lands on the river Clyde, against the Clyde Navigation Trustees, craving the Court to interdict the "respondents, and all others acting under their orders or authority, from using or disposing of any soil or other matter cut, dredged, or otherwise taken from any part of the banks, channel, or bed of the river Clyde, upon or *ex adverso* of the complainer Lord Blantyre's lands and estates of Erskine, Northbarr, and Bishopton, on the south side of the said river Clyde, and the complainer's lands of Kilpatrick, Shorepark, Dalnottar, and Glenarbuck, on the north side of the said river, out to the central base line or *medium filum* of the said river *ex adverso* of the said respective lands, otherwise than by depositing or laying the soil or other matter so cut, dredged, or taken upon the most convenient banks of the river upon or *ex adverso* of the said lands, at such parts thereof as shall be approved of by the complainers; or at least to interdict, prohibit, and discharge the respondents, and all others acting under their orders or authority, from using or disposing of any soil or other matter cut, dredged, or otherwise taken from any part of the banks, bed, or channel of the said river above the present low-water mark, or above low-water mark as it existed prior to the operations of the respondents and their predecessors, under their various Acts of Parliament, situated upon or *ex adverso* of any of the said lands, otherwise than by depositing the soil or other matter so cut, dredged, or taken upon the most convenient banks of the river upon or *ex adverso* of the said lands, at such parts thereof as shall be approved of by the com-

plainers; and in any event, to interdict, prohibit, and discharge the respondents, and all others acting under their authority, from carrying away and throwing into the sea at Loch Long, or elsewhere, any of the said soil or other matter, and from using or employing the same for any purposes other than the purposes of the respondents' undertaking as defined by their Acts of Parliament; or to do otherwise," &c.

A variety of Acts of Parliament have been passed for the improvement of the navigation of the river, and in particular the following Acts, viz.:—The Act 32 Geo. II., cap. 62, passed in the year 1758; the Act 10 Geo. III., cap. 104, passed in the year 1769; the Act 49 Geo. III., cap. 74, passed in the year 1809; the Act 6 Geo. IV., cap. 117, passed in the year 1825; the Act 3 & 4 Vict., cap. 118, passed in the year 1840; and the Act of 1858, viz., 21 & 22 Vict., cap. 149, by which the respondents, the Trustees of the Clyde Navigation, were constituted a body corporate.

By section 76 of the said Consolidation Act of 1858, it is provided that, "subject to the provisions of this Act, and of any agreements authorised or confirmed by the recited Acts or this Act, and to the provisions and declarations of any conveyance granted to the Clyde Trustees, the undertaking of the Trustees shall, in terms of the recited Acts, consist of the deepening, straightening, enlarging, widening or confining, dredging, scouring, improving, and cleansing the river and harbour, until a depth at least of 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; the forming and erecting, on both sides of the river, of such jetties, banks, walls, sluices, and works, and such fences for making, securing, continuing, and maintaining the channel of the river within proper bounds, as the trustees shall think necessary; 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; the cleansing, scouring, and opening any other streams, brooks, or watercourses which now fall into the river, and the digging and cutting the banks of the same for improving the navigation of the river; the digging, cutting, removing, carrying away, and using such earth, gravel, stones, and other materials therein, upon or out of the said land, soil, or ground 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 . . . . and, 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 so many of the said works as to them from time to time shall seem expedient; reserving always to the proprietors of lands adjacent to the river, all rights to soil acquired from the river, and other rights competent to them at common law, without prejudice to the terms of the 19th section of the fifth recited Act, as saved by this Act."

The complainers alleged that the respondents, in the course of their operations in cutting and excavating the river banks and bed, and of their dredging operations, obtain a large quantity of soil and other matters, "which they are bound, both at common law and under the said Acts of Parliament, to lay down upon the most convenient and suitable portions of the banks *ex adverso* of or from which the same are taken. The respondents' predecessors for a number of years did so. . . . . Instead of continuing to deposit the soil and other matters, the respondents have recently commenced a practice of carrying the said soil or other matters away in steamers or hopper barges fitted for the purpose, into deep water in Loch Long and elsewhere, and there throwing the same into the sea."

This practice, the complainers alleged, was illegal, the respondents being bound to lay the soil on the most convenient banks of the river, and the banks on the complainer's properties were most convenient for the purpose.

The Lord Ordinary (BARCAPLE) repelled the reasons of suspension, and refused the interdict.

The complainer reclaimed.

CLARK, SHAND, and BALFOUR for reclaimer.

YOUNG and GIFFORD for respondents.

LORD PRESIDENT—This suspension and interdict at the instance of Lord Blantyre is founded on allegations that the Clyde Navigation Trustees, in the course of their operations in the way of deepening and enlarging the channel of the river, have introduced a novelty, and have carried away out to sea the material which is raised by these operations, and have disposed of it there, whereas formerly they used it entirely by laying it on the banks of the river. That, no doubt, is an important change in the mode of conducting their operations, but whether it is productive of any disadvantage to the complainer, we have scarcely the means of judging. The only question for our consideration at present is, whether it is a change in the mode of conducting these operations which the complainer can stop by interdict. It must be kept in view that these operations were matter of statutory duty on the part of the trustees. It is not matter of choice, as might be the case with a private individual. They are bound by Statute, and the only question is, whether they are bound in the manner contended for by the complainer.

Keeping that in view, I am somewhat startled by the terms of the prayer of this note, for what Lord Blantyre asks is [*reads first branch of prayer*]. Then there is an alternative prayer, and then there is a conclusion for interdict against the performance of operations which must be performed, otherwise than in one particular way, which is substantially asking the Court to order it to be done in that particular way. If we grant this interdict, the effect must be that the Clyde Trustees would be compelled, in terms of this prayer, to deposit the whole soil which they cut or dredge in the course of their operations on the banks of the river *ex adverso* of the complainer's lands, at such part as the complainer shall indicate. So that the effect of a judgment in this process would be the same as a decerniture for the particular thing. I have some doubt about the competency of that; and if there had been any difficulty about the case otherwise, I should have wished farther argument as to the competency of such an application; but the Lord Ordinary has disregarded that objection, and I am disposed to take the same view, only considering it so far that it makes me more inclined, on the merits, to say that I see no [ground, on the Statute or otherwise, for granting any part of the prayer.

The question comes to be merely the construction of one Act of Parliament—the existing Statute under which the Clyde Trustees carry on their

operations. If it be made a condition of the powers thereby conferred upon them to deepen and enlarge the channel of the river that they shall lay the soil on the banks nearest the place from which the soil is taken, then the complainer may be entitled, on the merits, to prevail. His Lordship then quoted several portions of the 76th section of the Act, and said—I am clearly of opinion that the trustees are empowered to lay all this soil on the most convenient bank, by which I understand the bank most convenient for them, but not without regard to the interests of other parties. That is a most reasonable power in the circumstances. It would be very inconvenient, and might be very much to the injury of private parties, if the trustees were only empowered to lay it on the bank opposite the place where it is raised. But the question is, Whether, having the power to lay it on the most convenient bank, they may not dispose of it in any other way? I see no reason for saying that they may not. There is nothing in the clause except power. It is descriptive of the undertaking, and in describing it the Statute seems to proceed simply on what they are empowered to do. I am therefore against the construction contended for.

But the complainer's argument was based also on previous acts. These can have no direct operation on a question under this Act, but I am not disposed to say they may not be referred to in a question of doubtful construction, for the purpose of seeing how, in a long course of legislation, some words may have been used. His Lordship then quoted from the previous Acts, and observed, that the expressions there used confirmed his reading of the Act of 1858, and he was therefore of opinion that the interlocutor of the Lord Ordinary was well founded.

Lord Curriehill concurred.

Lord Deas concurred.

Lord Ardmillan—We are not here in a question of compensation, or of declarator. The question is one of interdict. And to interpose to regulate the proceedings of a great public body of trustees by such an interdict is an exceedingly delicate matter. Trustees for public purposes, acting under the authority of Statute, are not to be presumed to act in excess of their powers. The proof that they are so acting must be very clear before the Court will stop their proceedings by interdict. A much clearer case must be made out than has been presented here. Any judgment which we might pronounce in this process would not be *res judicata* in a declarator. So far as I have formed an opinion on this matter, I agree in holding that the contention of the complainer is unfounded.

Agents for Complainer—Dundas & Wilson, C.S.
Agent for Respondents—James Webster, S.S.C.

## *Friday, May* 29.

### BLACKBURN *v.* MEIKLEM.

*Property—Servitude road—Challenge—Acquiescence.* Circumstances in which *held* that a party was entitled to the use of a servitude-road as an access to his farm.

These were conjoined actions of declarator, the one at the instance of Mr Blackburn of Killearn against the Rev. James Meiklem of Dukehouse, and the other at the instance of Mr Meiklem against Mr Blackburn, relating to a servitude road claimed by Mr Meiklem.

The Lord Ordinary (Barcaple) after a proof, pronounced this interlocutor:—

"Finds, as matter of fact, *first*, that for time immemorial, or at least for forty years prior to the year 1845, the authors of the Reverend James Meiklem, defender and pursuer, in the lands or farm of Dukehouse, possessed and enjoyed a servitude road as an access between the public turnpike road, known as the Gartness Road, and the said farm of Dukehouse, in the line second described in the conclusions of the action at the instance of the said James Meiklem, passing through a field forming part of the farm of Drummore, belonging to the pursuer and defender, Peter Blackburn, and thence by a ford across the river Endrick into the said lands of Dukehouse, and that for horses, carts, cattle, and sheep, as well as foot passengers; *second*, that in or soon after the said year 1845, when the public turnpike road from Glasgow to Aberfoyle was opened, the line of said servitude road was, by mutual consent of the former proprietor of said lands of Dukehouse and the said Peter Blackburn, changed to the line first described in the conclusions of the action at the instance of the said Reverend James Meiklem, leading from a gate near Killearn Bridge, in the fence of the said Glasgow and Aberfoyle turnpike road, which communicates with the said Gartness turnpike road, and thence along or near to the bank of the river Endrick, and through the said field belonging to the said Peter Blackburn, and forming part of the said farm of Drummore, and thence by said ford across the Endrick to the said lands of Dukehouse; *third*, that from that time the said new line of servitude road was possessed by the said James Meiklem's authors and the said James Meiklem himself, for the use of the said lands of Dukehouse, without interruption, until the year 1866; *fourth*, that after the line of said servitude road was changed as aforesaid, the said Peter Blackburn ploughed up, or otherwise obliterated, the former line of road, and a quarry has been wrought across the same by the road trustees of the district, and that the said old line is not now available as a servitude road: Finds, as matter of law, that the said Reverend James Meiklem is entitled to the free use and enjoyment of said servitude road in said new line thereof, as an access to and from the said lands of Dukehouse: Therefore sustains the defences for the said James Meiklem and William Henderson, the other defender in the action at the instance of the said Peter Blackburn, and assoilzies the said James Meiklam and William Henderson from the conclusions of said action, and decerns; and, in the action at the instance of the said James Meiklem and William Henderson, repels the defences, and finds, decerns, and declares that the pursuer, the said Reverend James Meiklem, as proprietor of the said lands of Dukehouse, and the pursuer, William Henderson, as the tenant thereof, and all others residing upon or occupying the said lands, and their successors, as proprietors, tenants, or occupants of said lands respectively, have a good and undoubted right and title, at all times and on all occasions, to the free use and enjoyment of a servitude road leading from the public turnpike road known as the Gartness Road, or from the public turnpike road leading from Glasgow to Aberfoyle, through the defender's lands of Killearn to the said lands of Dukehouse, and that they are entitled to resort to said road, and to exercise and enjoy a free passage along the same, and to drive horses and carts, cattle, sheep, and bestial along it: And finds, decerns, and declares that the line of said servitude