mined upon continuing the use of the grinding mill, Mr Scott will comply with their desire, but should his fears be realised, the responsibility must rest with the Clyde Trustees, and not with him. He will now, therefore, proceed at once with the rebuilding of the brick invert, using the grinding mill for the cement, unless your clients should authorise him to mix it with the hand." I cannot help thinking that Mr Scott is entitled to the credit of sincerity in making this statement. What further investigation may show of the true motives of parties I shall not anticipate. With the information before me I am inclined to believe that if the contractor had had the explanation given him which is now stated by the Clyde Trustee in their answers, he would have been ready to go on. The question before us is whether the works are to be allowed to go on in the meantime, or whether the trustees are to be entitled, under article 11 of the contract, to oust the contractor, and take the works into their own hands, at his expense? I am not prepared, by refusing this note of suspension, to put this power into the hands of the Trustees. I do not think they have justified their position so as to entitle them to act in this very stringent way. It is not clear that the cause of the stoppage of the works was the misconduct and delay of the contractor. What I propose to do is to grant interim interdict, not exactly in the terms of the Lord Ordinary's interlocutor, but to prevent the respondents proceeding under article 11 from taking possession of the works. The Lord Ordinary's interlocutor seems to imply that the engineers are in some degree disqualified from acting as arbiters. It is premature and unnecessary to decide that at present. If we prevent the Trustees from acting on article 11, the work will proceed as if no dispute had arisen, and under the supervision of the engineers. Questions may then arise; but I should hope for the sake of the parties and the public that the parties, especially Mr Scott and Messrs Bell and Miller, will not continue in a hostile attitude, but will endeavour to combine to carry on the works, affording each other every facility. In the meantime, I do not see my way to allow the Trustees to take the work out of the contractor's hands.

The other Judges concurred.

The following interlocutor was pronounced:—"Recall the interlocutor of the Lord Ordinary, and remit to the Lord Ordinary in the Bill Chamber of new to pass the note, and to grant interdict *ad interim* against the respondents' proceeding under the 11th section or head of the contract between them and the complainer to take possession of the works in course of construction by the complainer under the said contract, or of the materials, plant, machinery, and erections on the ground of the said works, or to carry on the said works by themselves or others.

Agents for Respondents and Reclaimers—Webster & Will, S.S.C.

Agent for Complainer and Respondent—T. J. Gordon, W.S.

Tuesday, July 18.

SELIGMANN *v.* FLENSBURG STEAM SHIPPING COMPANY.

(*Vide ante*, p. 507.)

Process—Jury Trial—Verdict—Damages—Notarial —Petition under the Merchant Shipping Act, 1854, § 514. *Held* that interest upon a claim of damages only runs as a general rule from the date when the verdict is applied, but that this is open to exception where the application of the verdict has been groundlessly delayed by the defendant.

A petition having been presented under the 514th section of the Merchant Shipping Act of 1854, with a view to bringing forward all parties claiming or entitled to participate in the maximum sum of damages allowed by that Act in the case of collision at sea, and to secure the defenders against any further claims being made upon them, *held* that, in the circumstances, the petition was needless, and that its presentation should not stop the currency of interest against the defenders.

In this case, the Flensburg Steam Shipping Co. having failed to get the verdict set aside and a new trial granted, on the ground that the jury had not apportioned the damage, or given any indication in their verdict that the sum assessed was divisible between the owner of the ship and the owners of the cargo, they presented a petition to their Lordships, setting forth the facts of the case, and that £4360, the amount assessed by the jury, was the maximum sum for which they were liable in respect of the collision to the owners of the 'Flora,' and all parties interested either in the goods, merchandise, or other things on board thereof at the time she was sunk.

They then stated "that by the 514th section of the 'Merchant Shipping Act, 1854,' 17 and 18 Vict, c. 104, it is provided that in cases where 'any liability has been, or is alleged to have been, incurred by any owner in respect of loss of life, personal injury, or loss of or damage to ships, boats, or goods, and several claims are made or apprehended in respect of such liability . . . . it shall be lawful in England or Ireland for the High Court of Chancery, and in Scotland for the Court of Session, and in any British possession for any competent court, to entertain proceedings at the suit of any owner, for the purpose of determining the amount of such liability, and for the distribution of such amount rateably amongst the several claimants, with power for any such court to stop all actions and suits pending in any other court in relation to the same subject matter; and any proceeding entertained by such Court of Chancery or Court of Session, or other competent court, may be conducted in such manner, and subject to such regulations as to making any persons interested parties to the same, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of costs, as the Court thinks just.' That the petitioners are ready to consign in Court the said sum of £4360, in order that the same may be distributed amongst the various persons entitled thereto, in accordance with the provisions of the foresaid statute. That the owners of the cargo on board of the said ship 'Flora' at the time of the collision—which cargo was, it is believed, of the value of £13,000 or thereby—threaten and intend, as the petitioners apprehend, to claim and take proceedings against them in respect of the loss of the said cargo in consequence of the said collision, and it is necessary that the petitioners should make the present application."

The prayer of the petition was as follows:—

"May it therefore please your Lordships to appoint this petition to be intimated on the walls and in the minute-book in common form, and to be served on the said Hermann Leo Seligmann, and on Messrs Gillespie, Cathcart & Fraser, merchants, Glasgow, the owners or consignees of the cargo on board the said steam ship 'Flora' at the time of collision; and further to order such intimation, by advertisement or otherwise, to be made to all parties interested, as to your Lordships may seem proper, and to ordain them to lodge answers thereto, if they any have, within a short time after service and intimation, to allow the petitioners to consign the said sum of £4360, and to find that the petitioners are only liable in once and single payment thereof, and to appoint parties to produce their claims to participate therein within a time to be fixed by your Lordships, with certification that parties who may not claim within such time to be fixed as aforesaid shall be excluded from participating in the foresaid sum, and thereupon to distribute the said sum amongst the respective parties according to their several rights and interests, and to decern therefor out of the said consigned sum; and in the meantime to restrain, prohibit, and interdict the said Hermann Leo Seligmann, and all other persons, from further prosecuting the said action at their instance now in dependence before your Lordships, or prosecuting any further or other action, or other legal proceedings against the petitioners, or either of them, in respect of said collision, or any loss or damage occasioned thereby, and in any event to find the petitioners entitled to the expenses of this application and procedure; and to do otherwise or further in the premises as to your Lordships shall seem proper."

Upon 1st June 1871 the Court pronounced the following order:—"The Lords appoint this petition to be intimated on the walls and in the minute-book for fourteen days; and grant warrant for serving the same on the parties named in the prayer thereof; and ordain them to lodge answers thereto, if so advised, within fourteen days after such service: further, appoint advertisement of the said petition and this deliverance to be made in each of the *North British Advertiser*, the *Glasgow Herald*, and the *Shipping and Mercantile Gazette* newspapers respectively, once weekly, for two weeks."

Answers were given in for Seligmann, in which he stated that "the respondent objects to the present petition in so far as it prays—(1) That the petitioners should be allowed to consign the said sum of £4360. If the owners of the cargo do not appear, this consignation is unnecessary. (2) That the respondent should be restrained, prohibited, and interdicted from further prosecuting the action at his instance now in dependence before your Lordships. And (3), That the petitioner should be found entitled to the expenses of this application and procedure."

On 1st July 1871, their Lordships pronounced the following order:—"The Lords having resumed consideration of the petition, with answers thereto for Hermann Leo Seligmann, and heard counsel; on the motion of the petitioners, appoint all parties interested to lodge their claims to participate in the fund mentioned in the petition within ten days from this date, and appoint copies of the petition, and the deliverance of 1st June last, and this deliverance, to be served on Percy J. Reid, insurance broker at Llyods, London, broker for the underwriters on the cargo of the 'Flora;' and appoint this deliverance to be advertised once in each of the *North British Advertiser*, the *Glasgow Herald*, and the *Shipping and Mercantile Gazette* newspapers."

A claim was accordingly put in for Mr Seligmann in the following terms:—"Under reference to the said petition, and answers thereto, and to the two closed records and issues therein mentioned, the said Hermann Leo Seligmann claims—(1) That in the event of no other party lodging a claim to participate in the fund mentioned in the petition, the said petition be refused, with expenses; or otherwise, to be ranked for the said whole sum of £4360, with interest thereon at the rate of 5 per cent from and after 25th March 1871 till paid. (2) In the event of a claim being lodged by any other party or parties entitled to participate in the said fund, the said Herman Leo Seligmann claims to be ranked and preferred to a proportion of the said fund effeiring to the sum of £15,000, as the gross amount of the damage suffered by the present claimant through the collision between the 'Prima' and the 'Flora.'

The claimant pleaded—"(1) In the event of no other claim being made to participation in the said fund, it is unnecessary to proceed further with the said petition, and it ought therefore to be refused. (2) Failing this, the respondent, in respect of his action and of the verdict, should be preferred to the sum in the verdict, with interest as claimed. (3) In the event of any other party or parties being found entitled to participate in the said fund, the present claimant is entitled to be ranked, as in competition with them, for a proportion thereof, effeiring to the amount of his total loss as condescended on."

No other claimants came forward, and their Lordships accordingly resumed consideration of the petition, and answers and claim for Mr Seligmann, and also of Mr Seligmann's motion to have the verdict in his favour applied, with interest upon the sum assessed by the jury at the rate of 5 per cent. from the date of the verdict.

SHAND and MACLEAN, for the Flensburg Steam Shipping Company, contended that the course they had taken was quite justifiable, and was one contemplated by the Act, and necessary for their own safety, and that they ought not therefore to be subjected in interest, more especially as Mr Seligmann had opposed consignation. They referred to the case of *Taylor* v. *Macfarlane*, 18th March 1868, 40 Jur. 332.

WATSON and ASHER, for Mr Seligman.

At advising—

LORD PRESIDENT—Unless the damages are liquidated by the verdict, it is impossible that interest should run upon the amount. In fact the verdict just accumulates the interest with the damages up to its own date, and slumps them in one sum. It is, moreover, not usual that interest should run even from the date of the verdict itself, for until applied the verdict is not final; therefore, it is only from the date of the application that interest properly runs. The only circumstances in which a question can arise are when the application of the verdict has been delayed. If it has been delayed by improper proceedings on the part of the defender, then there must be an exception to the general rule. Now it appears to me that the proceedings here of the defender, in resisting the application of the verdict, were not justifiable. I think, in the first place, that the application for a new trial was quite groundless and absurd, and must not be allowed to stop the running of interest. The motion for a

rule was made on the 17th May, two days from the end of the period during which it was competent. Had it not been made, the verdict might have been applied upon the 19th, and from that day I think interest should run. I think, moreover, that this petition ought not to have been presented. There was really very little ground for apprehension on the part of the defender; but I am willing to give them credit so far, that they were desirous of making very sure that no other sufferers from the collision were going to make claims upon them. But they were not entitled to secure their own safety at the expense of another party. I am not, therefore, for allowing the presentation of that petition to stop the currency of interest upon the sum found to be due.

The other Judges concurred.

The Court accordingly applied the verdict, and decerned in favour of Mr Seligmann for the full amount of damages found by the jury.

Agents for Mr Seligmann—Webster & Will, S.S.C.

Agents for the Flensburg Steam Shipping Company—Mann & Duncan, S.S.C.

Tuesday, July 18.

DUFFY *v.* RITCHIE, MENZIES & CO.

Cessio Bonorum—*Interim Liberation. Cessio* and liberation *refused*, in respect of the vagueness and unsatisfactoriness of the debtor's statements.

The pursuer was incarcerated on 3d May, in default of payment of a bill for £20, £19 of which was still due. Having made a claim for aliment, he deponed he was possessed of no assets: but in a summons of *cessio*, raised on 13th June, he stated he had assets to the amount of £68, 10s. His liabilities, he alleged, amounted to £336, 18s, one debt being for £150 to his father-in law, and one for £120 to his brother- in-law. No statement was made of how the debts were incurred, nor any proof given of their reality, and the only account he gave of his embarrassments was to the effect that he was a general dealer, and from his inexperience in business had got into difficulties. He also presented a petition for interim liberation, offering caution *de judicio sisti*. The incarcerating creditors objected to *cessio* or interim liberation being granted, and alleged their belief that he was in possession of further funds, and also of furniture.

When the petition was moved, the Court directed it to be heard along with the *cessio*.

MORRISON for the pursuer.

LEES in answer.

The Court *hoc statu* refused the *cessio*, and also to grant liberation. There was no information here on which *cessio* could be granted. Practically it amounted to this—the pursuer was in prison and wanted out. But before that could be granted there must be some information given of how he contracted debt, or what he lived on, and generally as to the circumstances. The only information given was very unsatisfactory.

Agent for Pursuer—J. Macqueen, S.S.C.

Agent for Defenders—W. K. Thwaites, S.S.C.

Tuesday, July 18.

SECOND DIVISION.

DUKE OF BUCCLEUCH *v.* TOD'S TRUSTEES.

Landlord and Tenant—Fences. Subdivision fences were put up by a tenant without the sanction of the landlord. *Held* that, as these fences were not necessary for the cultivation of the farm, and had been intended only for the tenant's use, they were the property of the tenant, who was entitled to remove them at the expiry of his lease.

This appeal arose out of a petition at the instance of the Duke of Buccleuch against the trustees of the late Mr Tod, who had been tenant of the farm of Cleuchfoots, presented to the Sheriff of Dumfries, and prayed to have the trustees ordained to restore certain fences which they had caused to be removed after Mr Tod's death. The facts are fully set out in the following interlocutor of the Sheriff-Substitute (HOPE):—

"Finds that the petitioner is heritable proprietor of the farm of Cleuchfoots, mentioned in the petition: That the respondents are the trustees of the deceased Walter Tod, sometime tenant of the said farm: That the said Walter Tod entered into a nine years' occupation of said farm at Whitsunday 1857, in virtue of a lease between him and the petitioner: That the said lease contained *inter alia* the following clause—'And the said tenant accepts the fences on the farm, whether dykes, ditches, or hedges (except the fences round the plantations) as in fencible condition, and binds himself to keep them in thorough repair, and to leave them in that condition at his removal;' and also the following clause—'And in case of the erection of new sub-division fences, the whole cost of constructing and repairing the same shall in every case be paid by the tenant, but no such subdivision fences shall be constructed until the lines of them are approved of by the proprietor or his chamberlain:' That at the time when said lease was entered into there was no wire fences on the farm: That, in the years 1861 and 1862 the said Walter Tod erected at his own expense the wire fences, wooden paling, and folds: That there is no evidence to show that said fences were erected with the approval of the proprietor or his chamberlain, but that no objection was made thereto by either of them: That, at the expiry of said lease, a new lease of said farm was entered into between the parties, to endure during the life of the said Walter Tod, but not exceeding fifteen years from Whitsunday 1866: That said lease contained clauses as to fences exactly similar to those contained in the previous lease: That it contains no reference by name to wire fences or palings: That the said Walter Tod died on or about the 25th of June 1869: That the respondents, as his trustees, caused to be taken down the wire fences, &c.: Finds in law—(1) That on a sound construction of the lease first mentioned, the deceased Walter Tod would not have been entitled as outgoing tenant at the expiry of the same to remove from the farm the wire fences and wooden paling and folds mentioned in the petition: (2) That the second lease confers no power on the said Walter Tod to remove said fences, which were on the farm when it was entered into: (3) That, therefore, the respondents are in no better position than their author would have been as outgoing tenant