agreed that it is settled by statute, and that interest at 4 per cent. is payable from 13th July 1852. But for the defences, the pursuer would be entitled to decree, but then the defender says that the pursuer is owing him a much larger sum than is contained in the conclusion of the summons. He therefore pleads, in the first place, compensation, a relevant and good plea. Further, he pleads that the pursuer, being under ultimate diligence at the instance of the defender for payment of sums greatly exceeding the amount concluded for in this action, is not entitled to prosecute the same, and the defender is entitled to have the amount due by him to the pursuer imputed to the debt owing by the pursuer to him. He further pleads that decree should not be allowed to go out until the claims on the other side are settled. I think there is a great deal of weight in these defences. If the pursuer obtained decree in terms of his summons, he would be able to do diligence against the defender, and compel him to pay the sum of £203, 0s. 1d., with interest, while the defender would be unable to make his diligence effective against the pursuer. The true mode of disposing of the case is to allow the pursuer an opportunity of stating objections to the claim of the defender. That can hardly be done in the present process; but until the pursuer shall in some way or other take steps for ascertaining the state of debt between him and the defender, I do not think he should be allowed to take decree in this action. As the parties are now agreed that the sum bears interest at 4 per cent., I propose that we should recall the interlocutor of the Lord Ordinary, and supersede consideration of the cause until the pursuer has an opportunity of stating in competent form his objections to the claim of the defender.

Lord Deas—The pursuer has obtained decree in the English Court for £203, 0s. 1d., and parties are now agreed that it bears interest at 4 per cent. The debt is sufficiently constituted; it is not therefore for the constitution of the debt that the pursuer brings this action. The only object of the pursuer is to get a decree which shall enable him to do diligence for that debt. The answer of the defender is that he holds a decree against the pursuer, on the face of it unobjectionable, for a much larger sum. The order upon Paul and Roy in this Court was jointly and severally to consign. The whole sum was consigned by one. The natural result is, that there is a liquid claim against the other for consignation of the other half. Mr Paul thus produces decree for that larger sum, and says, "You are not entitled to take decree against me while I can show an unreduced decree against you for a larger sum." This is not exactly a plea of compensation. The proper remedy of the pursuer is to bring an action to have it determined what is the state of accounts between him and the defender. There is no incompetency in bringing such an action, still less is there any incompetency in bringing a reduction to set aside Mr Paul's decree. I think the right way is to dismiss the action in respect of the circumstances.

Lord Ardmillan—I agree with your Lordship in the chair as to the way this action should be disposed of. So far as regards the principal sum, it is an action for a decree conform. In addition, it was an action to ascertain interest, but that is now settled. The action is met by Mr Paul by a reference to a decree which he obtained for a larger sum. The practical effect of giving decree in this action to the pursuer would be to enable him to do diligence in this country against Mr Paul, whereas Mr Paul has no means of doing diligence against Mr Roy, though he holds a decree for a much larger sum. I agree with Lord Deas that compensation is not the proper character of the defence. It is rather that the present is not a fair and legitimate action. But then Mr Roy says, "That decree obtained by Mr Paul was obtained in an action in which I was not a party." We shall best meet the justice of the case by doing nothing in the present action, and giving Mr Roy the opportunity of challenging the decree in favour of Mr Paul.

Lord Kinloch—I concur in the course suggested. There can be no doubt of the competency of the action. It is an action for enforcing payment. If there was no defence, decree would go out against the defender. The defence is substantially that the debt, for which decree is sought, has been paid already, and a plea of compensation is stated. I think there is, *prima facie*, compensation, arising from the mutual relief between two co-obligants to the extent of one-half. It may turn out that there is no relief, or relief to a smaller extent. The course which your Lordship suggests is the right course, not to give decree, because *ex facie* there is compensation; on the other hand, not to dismiss the action, because the compensation is only *prima facie*.

Agents for Pursuer—Macrae & Flett, W.S.

Agents for Defender—Millar, Allardice, & Robson, W.S.

Thursday, June 20.

WILLIAM DUNCAN (CLERK TO THE CITY OF EDINBURGH ROAD TRUST) *v.* COUSIN AND OTHERS.

ID. *v.* LORD CLINTON.

Edinburgh Roads and Streets Act, 1862 (25 *Vict. c.* 53) 33 *and* 34—*Assessment.*

Held that the owners of lands and heritages on one side of a private street within the City of Edinburgh District of Roads, which was intended to consist, and did consist, of a single row of villas—the other side of the street not being available for building purposes—were liable for the whole expense of making up and constructing the carriage-way of the street.

The first of these actions was one at the instance of William Duncan, clerk to the City of Edinburgh Road Trust, and, as such, authorised to sue under the Edinburgh Roads and Streets Act, 1862, against George Cousin, Henry Graham Lawson, and the trustees of the late Andrew Jameson, concluding for payment from the several parties of the sums of £100, 11s. 4d., £45, 18s., and £45, 18s., being the proportions respectively allocated on the defenders of the expense of making up and constructing the carriage-way of Bruntsfield Terrace.

Section 33 of the Edinburgh Roads and Streets Act, 1862, provides that "In the case of such private streets as are or may be within the district, and as are not specified in schedule (C) (annexed to the Act), where the carriage-way shall not have been made up and constructed, nothing

herein contained shall be held or construed to confer any right on the trustees to compel the making up, constructing, and causewaying of any such street, until they have received intimation in writing from the superior that the said street is an open thoroughfare for public use, or until three-fourths of the intended houses in such street shall either have been erected or are in course of being erected, or the areas for such intended houses shall have been feued under an obligation to erect houses, or until the Sheriff, on an application by the trustees or any three or more persons assessed in virtue of this Act, setting forth the circumstances of the case, shall determine that it would be for the public advantage that any such street should be made up, constructed, and causewayed, but in any of these cases it shall be lawful for the trustees, and they shall be bound to require the owners of lands and heritages in any such streets to make up, construct, and causeway the same to the satisfaction of the surveyor or other officer of the trustees for the time being, by leaving within the dwelling houses or other premises of such owners respectively a copy of a notice to that effect, which shall be deemed sufficient intimation to such owners; and if such owners shall fail or neglect within three months from and after the date of such notice to make up, construct, and causeway any such street as aforesaid, it shall be lawful for the trustees, and they shall be bound to make up, construct, and causeway such street in such way as to them may seem proper or necessary, and they shall levy the expense as the same shall be ascertained by an account under the hand of their surveyor, or other officer for the time, from such owners failing or neglecting as aforesaid, and shall recover the same in like manner as the assessment hereby authorised is appointed to be recovered, or otherwise according to law."

Section 34 provides that "the expenses which may be incurred by the trustees under the provisions of this Act, in making up, constructing, and causewaying the carriage-way of any private street within the district, or in executing repairs on the same, shall be assessed by the trustees on the owners of lands and heritages according and in proportion to the lineal frontage of the same, subject to this provision, that the proportion leviable, according to frontage, from the owners of such lands and heritages as consist of buildings, shall be assessed on them, as among themselves, according and in proportion to the annual rent or value of such buildings, and the trustees shall recover the amount of such expenses from such owners in the same manner as the assessment under this Act is authorised to be recovered, or otherwise according to law: Provided always that where such owners may not be the persons liable in the maintenance of the street, they shall be entitled to be relieved by the persons liable in the same from payment of such assessed expenses."

Bruntsfield Terrace is a private street within the City of Edinburgh District of Roads. In April 1866 the carriage-way of the street was not made up and constructed. The ground on the south side of the street had all been feued out, and villas had been erected by the feuars, viz., Mr Cousin, Mr Lawson, Mr Jameson, and Mrs Cameron. It was not disputed that these were the whole houses intended to be erected on the south side. The exact state of the titles to the property on the north side of the street will be afterwards adverted to, but it is sufficient to say that the street is bounded on the north by Bruntsfield Links, the property of the Corporation of Edinburgh, but held by them subject to public use. It was never intended that houses were to be erected on the north side of Bruntsfield Terrace, and indeed it was matter of notoriety that none such could be built in the existing state of rights.

In April 1866 a requisition was presented to the Road Trust, calling on them to require the owners of land and heritages in Bruntsfield Terrace to make up and construct the carriage-way in terms of sect. 33 of the Act, in respect that at least three-fourths of the houses in the street had been erected. Thereupon, on 5th June 1866, the Road Trustees caused the statutory notice to be left with Mr Cousin, Mr Lawson, Mr Jameson, and Mrs Cameron, as the only owners of lands and heritages in Bruntsfield Terrace.

The owners having failed to construct the carriage-way within three months, the trustees constructed the same at the expense of £239, 12s. 4d., which they proceeded to allocate between the feuars on the south side. Mrs Cameron paid the sum allocated on her. The others offered to pay one-half of their respective assessments, but maintained that the owner or owners of the ground on the north side were liable for one-half of the expense of making up the carriage-way.

The ground occupied by the feus of the defenders and Mrs Cameron, and the street, formerly belonged to Sir John Stuart Forbes, whose property was separated from Bruntsfield Links by an old wall. It rather appeared that the wall belonged to Sir John Stuart Forbes. When the street was made it consisted of a carriage-way with a footpath on both sides. The feuars, whose feus are declared in their feu-contracts with Sir J. S. Forbes to be bounded on the north by Brunstfield Terrace, are taken bound to maintain the footpath next their feus. In November 1865 the defenders obtained leave from the Town-Council, for any interest they (the Town-Council) had, to take down the old wall. This was accordingly done, and the site thrown into the footpath on the north side of the street.

The defenders averred "that there are lands and heritages on the north side of Bruntsfield Terrace in which the defenders have no right of property, and the owners or owner of which have not been assessed along with the defenders for the expense of making up and constructing said carriage-way. The expense of making up the whole breadth of the carriage-way has been assessed as on the owners of the south side thereof alone, in contravention of the terms and intention of the statute libelled."

The Lord Ordinary (Jeviswoode) pronounced the following interlocutor:—"Finds that the defenders are proprietors, under their titles set forth on the record, of lands and heritages which are situated exclusively on the south side of the street called Bruntsfield Terrace, and are not proprietors either of the site of the wall which, as set forth in article 6 of the condescendence for the pursuer, formerly existed, and which ran immediately along the north side of a footpath constructed on the north side of the carriage-way of the said street (and which site now forms part of the said footpath); or of the lands situated immediately to the north of the site of said wall, which lands form part of Bruntsfield Links, the property of the Corporation of Edinburgh: And, with reference to the foregoing findings, finds, in point of law, that the

defenders are not liable in payment to the pursuer of more than their respective portions of one-half of the expense incurred by the City of Edinburgh Road Trust in making up and constructing the carriage-way of the said street, and allocated on the defenders, as set forth in the 7th article of said condescendence, or otherwise, in payment to the pursuer, as stated in answer 7 for the defenders, of more than 'such other sums as, under a computation, including all the lands and heritages in Bruntsfield Terrace, may be found to be assessable on them, in terms of the Edinburgh Roads and Streets Act, 1862;' therefore, and in respect that the defenders appear to have been all along ready and willing to pay such half, or such other sums as may be found to be assessable on them as aforesaid, dismisses the action, and decerns; finds the pursuer liable to the defenders in expenses."

The pursuer reclaimed.

The case was heard in February 1872, the Lord President absent.

SOLICITOR-GENERAL and SHAND, for the reclaimer, argued, that as Bruntsfield Terrace had always been intended to consist of a row of houses on the south side only, and as no houses could be built on the north side as long as the public rights in Bruntsfield Links subsisted, the only "owners of lands and heritages in the street," in the sense of the statute, were the feuars on the south side. The expense of constructing the carriage-way was to be borne by those whose lands and heritages fronted the street. The only intelligible and equitable meaning of the word "frontage" was frontage available for building purposes. Even assuming the feudal title of the strip of ground occupied by the footpath on the north side and the site of the old wall to be in the representatives of Sir John Stuart Forbes, it really could not be contended that the bare possession of a narrow strip which never could be made available for building or any other purposes made them frontagers in the sense of rendering them liable for a share of the expense of constructing the carriage-way.

MILLAR, Q.C., and JAMESON, for the defenders, argued, that it was obvious that a street must have two sides. The land on the north side of Bruntsfield Terrace must be owned by some person or persons. There was nothing whatever in the Act limiting the definition "lands and heritages" to land built upon, or to land of a certain breadth. The assessment was to be laid on according to the lineal frontage. This gave a simple rule, capable of being at once applied, whereas if the element of breadth were once introduced, it would be impossible to say who was or was not a frontager. An illustration of how entirely the liability depended on mere frontage, and not upon the value of the subjects, was found in the fact that the defender Cousin, who had a corner feu facing two streets, had to pay his share of constructing both streets according to his frontage to each street. It was contended for the pursuer that Sir John S. Forbes or his representatives could take no benefit from their ownership of the strip on the north side. But this was not the case. The Corporation might get an Act of Parliament to enable them to build on Bruntsfield Links, and then Sir John's representatives would have a valuable subject to dispose of, viz., the right of frontage towards Bruntsfield Terrace. If it should be held that Sir John's representatives were not owners of any ground on the north side of Bruntsfield Terrace, then it undoubtedly followed that the Corporation, as owners of Bruntsfield Links, were the owners of lands and heritages on the north side of the street, and therefore liable for a share of the assessment. If the intervention of the strip belonging to Sir John's representatives exempted the Corporation from liability, then they must be themselves liable. In short, Sir John's representatives could not be allowed, by the device of keeping a narrow strip in their hands, at once to exempt the Corporation from liability, and also maintain their own exemption, so as to throw the whole burden on the feuars on the south side.

The Court, on 29th February 1872, before further answer, allowed the pursuer, if so advised, to call the representatives of the late Sir John Stuart Forbes as parties to the action.

The pursuer accordingly raised an action against Lord Clinton, as representing Sir John Stuart Forbes, concluding that the action should be conjoined with the former action, and, in the event of the pursuer failing to obtain decree in the former action, concluding against Lord Clinton for £96, 3s. 8d., being one-half of the sums sought to be recovered from the defenders in the former action.

Defences were lodged for Lord Clinton.

He pleaded that he was not liable, in respect (1) that the expense of the street was incurred by the Road Trustees without notice to him or his predecessors; (2) that he was not within the meaning of the statute an owner of lands and heritages within the street, having frontage to the street.

LORD JERVISWOODE reported the cause to the First Division.

The two actions were debated together.

WATSON and LEE for Lord Clinton.

At advising—

LORD PRESIDENT—It is not disputed that Bruntsfield Terrace is a private street within the meaning of the Edinburgh Roads and Streets Act, 1862, and that it is within the City of Edinburgh District of Roads. At the date of the proceedings taken by the Road Trustees, the carriage-way had not been up or constructed, but the whole property on the south side of the street had been feued out and built upon, and was owned by four different parties, viz., the three defenders in the original action, and another, Mrs Cameron, who was not called as a defender, because she did not resist payment. It appears to me that Bruntsfield Terrace was designed and laid out upon the footing of being a one-sided street, or, in fact, a terrace, as its name imports. The ground on the other side, speaking generally, is Bruntsfield Links, the property of the Corporation, but subject to public uses, and, *prima facie*, not ground that can be built upon. The presumption that it cannot be feued out or built upon is much increased by the judgment, or, at least, the grounds of judgment, in *Magistrates of Edinburgh* v. *Warrender*, June 5, 1863, 1 Macph. 887. It is said that between the Links and the carriage-way of the road there intervenes, (1) the site of a wall, built by Sir John Stuart Forbes on the extreme verge of his ground; and (2) the footpath upon the north side of the carriage way. It is said that the property of the site of the wall and the property of the footpath is still in the representatives of Sir John Stuart Forbes. In the feu-contracts of the defenders, they are only taken bound to maintain the footpath on the south side of the carriage-way, next their own feus, and accordingly they maintain that they have no concern

with the footpath on the north side. This is not a very favourable contention for them, seeing that it is not disputed that they themselves perfected this footpath by carrying it over the site of the old wall. In that state of circumstances, the Road Trustees had presented to them a requisition calling upon them to require the owners of lands and heritages in the street to make up and construct the carriage-way in terms of section 33 of the Act, in respect that at least three-fourths of the houses in the street had been erected. The Trustees proceeded upon this requisition, and did give notice in May 1866 to the three defenders and Mrs Cameron, as being the only owners of lands and heritages in the street within the meaning of the statute. Mrs Cameron, as I have said, submitted. The others resisted, on the ground that they are not the only owners of lands and heritages in the street, but that there is another owner or owners on the north side, liable for a part of the expense. The defenders only affirmed this in general terms, and did not take upon them to say who that owner was; nor did they give any satisfactory explanation of the state of property on the north side of the street. The result was, that after some discussion, which I had not the advantage of hearing, the Court allowed the pursuer to call the representatives of Sir John Stuart Forbes, as the parties who were said to be liable as owners on the north side.

The first question appears to me, whether, in the state of facts as now disclosed, the original defenders and Mrs Cameron are or are not the sole owners of lands and heritages in the street within the meaning of section 33 of the Act? I am of opinion that they are. It is provided—(*reads sections* 33 *and* 34). The question turns very much on the construction of these two sections. It appears to me that an owner of lands and heritages in a street, in the sense of these sections, substantially means an owner of a building stance in the street,—I do not mean a stance which has been built upon, or even one which necessarily will be built upon, but a stance fronting the street, fitted for building purposes, and therefore forming part of the street in the sense of the statute. The definition of "owner" in the interpretation clause of the statute includes "fiar, liferenter, feuar, or other person in the actual possession or receipt of the rents of lands and heritages, and the factor, agent, or commissioner of such person who draws the rents." The words "lands and heritages" are declared to bear the construction attached to them in the Valuation of Lands Act (17 and 18 Vict. c. 91). It is unnecessary to refer to that Act, as we all know that "lands and heritages" in the Valuation Act are subjects capable of bearing an annual value. The persons who are necessarily meant by "owners of lands and heritages" in section 33 of the Road Act, are owners who are either in the natural or civil possession of a subject capable of producing annual value. Are there any persons answering to this description in Bruntsfield Terrace except the three defenders and Mrs Cameron? "Yes," the defenders say, "there is the owner of the site of the old wall." To say that a man, who, by some accident in feudal conveyancing, happens to have the title to the site of an old wall, is an owner of lands and heritages in the street, is to reduce the statute to nonsense. The defenders and Mrs Cameron appear to me to be the sole owners of lands and heritages in the street within the meaning of the statute. The street has been fully and completely built; there are no more building stances; and therefore the expense of constructing the carriage-way must fall on them. The result of my opinion is, that the pursuer is entitled to judgment against the original defenders, in terms of the conclusions of the summons. Lord Clinton must be assoilzied, with expenses. But a question remains, whether the expenses, which must, in the first place, be paid by the pursuer to Lord Clinton, are to be ultimately borne by him, or whether he ought not to be relieved by the defenders in the first action. As it was entirely in consequence of the nature of the defence set up by the defenders in the first action that the second action became necessary, I am of opinion that these defenders must bear the expenses of this second action as well as of the first.

Lord Deas—I concur. I do not rest my judgment so much on the definition of "lands and heritages," even taken in connection with the Valuation Act, as if they must be lands and heritages yielding annual fruits, as on the clause which provides that the owners of lands and heritages shall be assessed in proportion to the lineal frontage of the same. In speaking of streets, lineal frontage necessarily refers to ground either built upon or capable of being built on.

Lord Ardmillan concurred.

Lord Kinloch—I have arrived at the same conclusion. The question substantially in issue is, whether the defenders, Cousin and others, feuars on the south side of Bruntsfield Terrace, are alone, in the sense of the statute, the owners of lands and heritages along, and having frontage to, the street, or whether these also comprehend the representatives of Sir John Stuart Forbes, as holding that character on the other or north side. Admittedly, these have no property on the north side except the site of an old wall, and the ground devoted to form a footway on that side of the street. On a reasonable construction of the statute, I conceive these not to fall within the category of owners liable in the expense of forming the street. Their ground is neither occupied by buildings, nor in a position to be so. It is a mere nominal stripe. They cannot have such use of the street as the statute contemplated in the case of owners along its line. I think the reason of the statute is altogether against their being made liable for the expense of the street. Nor does this operate any injustice against the feuars in the existing circumstances. The effect of the wall (or its maintained site) and the interjected footway, is to prevent the proprietor behind them, to the north, from claiming the right of frontage to the street, and so substantially to give the street the character of being built on upon one side only, in other words, the character of a terrace; and to preserve to the feuars on the south side the resulting advantages of better air and pleasanter view. I perceive no sufficient ground on which the feuars on the south side can escape the entire liability for the expense of forming the street.

I concur with your Lordship in the chair as to the mode the case should be disposed of; and also on the subject of expenses.

The Court conjoined the actions; decerned against the defenders in the first action in terms of the conclusion of the summons, and found them liable in expenses; assoilzied the defender Lord

Clinton, and found the pursuer liable to him in expenses, but found the pursuer entitled to be relieved of the expenses of the second action by the defenders in the first action.

Agent for Pursuer—William Archibald, S.S.C.
Agent for Defenders, Cousin and others—John Auld, W.S.
Agents for Defender, Lord Clinton—Mackenzie & Kermack, W.S.

HIGH COURT OF JUSTICIARY.

Monday, June 17.

MEARNS *v.* ANGUS.

(Before Lord Justice-Clerk, Lords Neaves, Ardmillan, and Jerviswoode.)

Suspension—Ferry—Statute 6 *Geo. IV., c.* 126, (*Montrose Bridge*), § 14.

Held that it was not a violation of the Statute 6 Geo. IV., c. 126, for a fisherman of Ferryden to convey himself and his nets in his own boat across the South Esk between Ferryden and Montrose.

This was a suspension of a conviction obtained before two Justices of Peace for the county of Forfar, on 9th December 1871, upon a complaint by the respondent. as treasurer to the Commissioners of Montrose Bridge, whereby the suspender was convicted of having violated the Act 6 Geo. IV., c. 126 (a local Act), entituled "An Act to amend two Acts for building a bridge over the river South Esk at or near the town of Montrose and county of Forfar."

The suspender set forth that the bridge over the South Esk at Montrose was erected under an Act passed in 1792. At that time a ferry existed from the village of Ferryden to Montrose. By the Act the working of the ferry, as soon as the bridge was erected, was put a stop to. By the Act 6 Geo. IV., c. 126, a new and more durable bridge was erected, and in this statute the clause in the prior Act, imposing a penalty on any one who should work the ferry for hire, was included. In the event of the bridge being rendered impassable, the Commissioners of the bridge had power by the Act to re-open or direct the re-opening of the ferry. In the Act there is a clause (§ 14) evidently intended for the benefit of the fishermen of Ferryden, which is to the following effect:—"That the fishermen of Ferryden and Usan shall be at full liberty to land from sea with fish on the Montrose side, or cross in boats the river South Esk, at all times when engaged in bringing fish to Montrose market, and without being liable to toll duty, and also to take over such of the members of their families and others as are going to Montrose and are engaged in selling and disposing of fish; but if any of the said fishermen shall be convicted of ferrying or carrying over, either gratis or for money, individuals not engaged in selling fish, they, and each person so ferried over, and not entitled to exemption, shall forfeit and pay any sum not exceeding £5, to be recovered and applied in manner provided by the Act." When the Act was passed, the fishermen of Ferryden were chiefly occupied in the white fishing, those engaged in the herring fishing repairing during the season to Peterhead, Fraserburgh, and other ports; but latterly the complainer, one of the crew of a herring-boat, and other fishermen, have been prosecuting the herring fishing with considerable success from their own port; and the Magistrates of Montrose, for the purpose of encouraging the trade, have set apart a part of the links on the north side of the river for drying the nets, there being no ground suitable for this purpose on the south or Ferryden side of the river. The boats engaged in the herring fishing are much larger than those used in the white fishing, and usually lie moored in the river near Ferryden Pier. The fishermen, on coming home from the fishing ground, first deliver their catch of fish to the fishcurers of Montrose, then land their nets for the purpose of being dried, and then proceed to Ferryden. Before again sailing the nets are collected, and either put on board the herring-boats, or, what is usually more convenient, a party of the crew proceed to the Montrose side in a small boat from Ferryden, and return with the nets to the herring-boat which is lying in the roadside ready to sail. The Montrose Bridge Commissioners, having been advised that the fishermen of Ferryden are not entitled to cross the river even in their own boats for the purpose of collecting and bringing back their nets after they are dried, caused the complainer to be prosecuted for a violation of the provisions of the Bridge Acts, imposing a penalty of £5 on any fisherman ferrying or carrying over, either gratis or for money, individuals not engaged in selling fish, committed on the 26th August 1871. In the trial of the case, the tackswoman of the bridge, admitting that her object was to make the owners of the herring-boats compound with her, deponed that there were thirty herring-boats belonging to Ferryden, fourteen of which compounded with her at the rate of 5s. each for liberty to pass and repass with their nets during the herring season, the remainder, including the complainer, refusing to pay her anything.

The Justices convicted the suspender of ferrying or carrying over himself, and fined him ten shillings.

No provision is made by the Commissioners for the transport of herring nets across the river otherwise than by the bridge. He had no cart to cart his nets, and he objects to travel a mile and a-half, as he would have to do if he went by the bridge to get between two points which are only 400 yards apart. Although the ferry was extinguished by statute, it has been reopened by the Commissioners to save the people of Ferryden, who are engaged at the mills and otherwise in Montrose, the great hardship and inconvenience of going round by the bridge when going to or coming from their work. But the Commissioners' ferry-boat takes nothing but passengers, and the complainer could not induce them to carry his nets for him for any consideration. In these circumstances, he has no course open but to carry them in his own boat, and this suspension has been brought for the purpose of trying whether, in so doing, he has been acting in accordance with law.

Shand and Guthrie Smith for the complainer.

Solicitor-General and Asher for the respondent.

At advising—

Lord Ardmillan said, that, apart from the provision in the Act of 1825, these fishermen, and this man in particular, had the undoubted right to take nets to Montrose and land them at Montrose, the Montrose burgh having given them leave to use