ment, that the clause I have read was to be read as two, not as one, thus—"Not responsible for the bursting of bags, or consequences arising therefrom, or for any of the following perils—whether arising from the negligence, default, or error in judgment of the pilot, master, mariners, engineers, or persons in the service of the ship, or for whose acts the shipowner is liable or otherwise—namely, risk of craft or hulk, or transhipment, explosion, heat, or fire at sea, in craft or hulk, or on shore, boilers, steam or machinery, or from the consequences of any damage or injury thereto, howsoever such damage or injury may be caused. Collision, straining, or other peril of the seas, rivers, navigation or land transit, of whatever nature or kind soever, and howsoever caused, excepted." If that is the true reading, these "perils of the sea" would fall to be read in the ordinary meaning of the term, and that risk could not be qualified by the words occuring in the former part of the clause. That was a very ingenious suggestion, and was very ably argued to us. Its greatest support was the occurrence of the word "excepted" at the end of the clause. If the clause is one and not two, that expression is pleonastic, for it expresses no more than the opening words "not responsible." But I think its presence can be otherwise accounted for. There is no doubt that in the bills of lading to which we used to be accustomed, the excepted risks used to be enumerated, and the clause ended with the word "excepted." While they have introduced this long string of exceptions, beginning with the words "not responsible," into the bill of lading, its framers have left the word "excepted," which is no longer necessary, standing. But its presence does not, I think, enable us to read the clause in the sense contended for by the pursuers. I therefore have come to be of opinion that the defenders must have the benefit of this clause, and the verdict must be entered for them. I cannot say that I have come to this conclusion without regret, for I am sure that the limitation of shipowners' liability in this way is likely to lead to much negligence and disastrous consequences. But if parties will contract in such terms, I can do nothing to prevent them.

Lord Deas, although with much difficulty and reluctance, concurred, on the ground that the interpretation suggested by the pursuers for this clause leads to the extravagant result that exceptions from the responsibility of the shipowners were themselves excepted.

Lord Mure and Lord Shand concurred, the latter observing that even upon the pursuers' own reading of the bill of lading, they were not entitled to succeed. His Lordship at the close of his opinion said—But even if the clause is to be read as the pursuer contended—that is, is to be broken up into three branches, and each part disconnected from the other—I am of opinion that in respect of the words "howsoever caused" the shipowner is exempted from liability, for he has thereby stipulated that he is free from liability for perils of the sea however they may be caused. These words must have some force, and the pursuers' argument gives them none. The shipowner is already freed from responsibility for ordinary perils of the sea, and these words must, I think, cover the only peril not already covered, viz., peril caused by the negligence of the seamen or master. The force of these words is not now for the first time before a court, for in the 21st vol. of the *Law Journal* (Common Pleas), p. 179, I see they received the interpretation I think they should receive here, in the case of *Austin*. I observe, too, that in the case of *Philips* v. *Clark*, *Law Journal* (Common Pleas), 26, p. 168, which was a case where leakage and breakage caused by the defenders' servants was the cause of the damage, Mr Justice Crowder observes—"It is said that the captain's intention was to free himself from all responsibility. In order to do that he ought to have expressed in clear terms that he was not to be liable for leakage or breakage arising from whatever cause." These are substantially the same words as are used here. And in the case of *Lloyd* the present Mr Justice Brett in the course of argument makes the observation that the words "however caused" are "a well-known form often adjudged upon." On the whole, I think that though this may have been an imprudent contract, it can receive no other interpretation than that which your Lordships propose to give it.

Verdict entered for defenders.

Counsel for Pursuers—Balfour—Mackintosh. Agent—John Henry, S.S.C.

Counsel for Defenders — Asher — Jameson. Agents—Webster & Will, S.S.C.

Wednesday, March 14.

[Bill Chamber.

SECOND DIVISION.

BAIRD *v.* KERR.

Interdict—Property—Sea-shore—Sea-ware.

B., who held lands bounded by the sea, under titles which gave him the sole and exclusive right to sea-ware *ex adverso* of the lands, applied for interdict against K., who, he alleged, had paid the inhabitants of a neighbouring village to gather the sea-ware and remove it to a short distance from the beach, whence K. carted it to his farm. K. answered that he bought the sea-ware in open market from the villagers, who claimed right to gather it. Interdict *refused.*

This was a suspension and interdict at the instance of William Baird, Esq. of Elie, Fife, against Hugh Baird, farmer, Abercrombie, St Monance, praying the Court "to interdict, prohibit, and discharge the respondent from collecting, removing, or carting away, by himself or others acting with his authority or on his behalf, sea-ware from the sea-shore or beach *ex adverso* of the complainer's lands and estates of Elie, Ardross, St Monance, and Pittenweem, in the county of Fife, or any of them, and also from carting or taking away sea-ware which has been in the knowledge of the respondent, or the persons acting on his behalf, gathered by others from the said sea-shore or beach, and removed to a short

distance therefrom, without the complainer's authority or permission to do so."

The complainer set forth that he was heir of entail in possession of the said estates, including the ancient baronies of these names. The estates extended for several miles along the sea. Under his titles to the said lands and estates the complainer had the sole and exclusive right to the sea-ware, whether growing or drifted, upon the shores or beach *ex adverso* of his said lands and estates, and to remove and dispose thereof at pleasure by himself or others having his authority. No such authority has been given to the respondent by the complainer, or by any one acting for him. The complainer further averred (Stat. 3)—"The respondent is tenant of the farm of Abercrombie, the property of Sir Robert Anstruther of Balcaskie, Baronet, and is situated about one and a half mile from St. Monance, and notwithstanding that he has no authority from the complainer, or any one acting for the complainer, to do so, the respondent has recently removed from the beach near St. Monance, *ex adverso* of the complainer's said lands and estates, large quantities of sea-ware, which is valuable manure, and has used the same as manure for his farm. At all events, he has carted and taken away, and used as manure for his farm, large quantities of said sea-ware which had been at his instigation, or in consequence of inducements held out and payments made by him, gathered by women and boys, or others of the St Monance villagers, from said beach and removed a short distance therefrom."

The complainer further averred that the respondent had been warned that the villagers had no authority to remove the ware.

The respondent admitted that previous to 1875 he had removed some sea-ware, but the complainer having objected, he ceased doing so, and the only ware used by him since that date he had purchased in open market from the inhabitants of the burgh of St. Monance, who claimed to have right to gather the ware under the charters of the burgh.

The Lord Ordinary on the Bills pronounced the following interlocutor:—

"*6th March* 1877.—The Lord Ordinary having heard parties' procurators, passes the note, but recals the interim interdict formerly granted.

"*Note.*—It is not disputed that a traffic in the sale of sea-ware by the inhabitants of St Monance has been publicly going on for a considerable period to the knowledge of the complainer. It also appears that this is done in the assertion of a right by these inhabitants. The complainer, however, has taken no steps to put an end to this traffic by proceeding against them. In these circumstances the Lord Ordinary does not think the complainer is entitled to interim interdict against the respondent, who merely purchases from them."

The complainer reclaimed.

Authorities—*M'Taggart* v. *M'Douall*, Mar. 6. 1867, 5 Macph. 541; *The Officers of State* v. *Smith*, Mar. 11, 1846, 8 D. 711; *Paterson* v. *Marquis of Ailsa*, Mar. 11, 1866, 8 D. 752; and *Lord Saltoun* v. *Park*, Nov. 24, 1857, 20 D. 89.

The Court adhered.

Counsel for Reclaimer—J. P. B. Robertson. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for Respondent — Asher — Graham Murray. Agents — Gibson-Craig, Dalziel, & Brodies, W.S.

Friday, March 16.

FIRST DIVISION.

CLIFT *v.* THE PORTOBELLO PIER COMPANY. *et e contra.*

(*Ante*, p. 344.)

Process—Expenses.

Held that where there are two actions about the same subject-matter, and between the same parties, the account for expenses in the one case can be set off against the account for expenses in the other, just as if the actions had been conjoined.

These were two actions between the same parties. The first was a petition by the Portobello Pier Company againt Clift, who was manager of their refreshment rooms. Clift had been dismissed by the Company, and the object of the petition was to obtain from him an assignation of the certificate and licence for the sale of liquors which he had obtained. The second action was a petition for interdict against the Company carrying on business in the refreshment rooms. The first case was decided in favour of Clift, with expenses; the second in favour of the Company, also with expenses. The Company having got their account audited, obtained decree in the agent's name, and Clift sought to obtain decree for his expenses, likewise in the name of the agent-disburser. The Company objected, on the ground that they were entitled to set off the one account against the other, and to pay the balance, a course they could not adopt if the decree was given against them in the name of the agent-disburser. It was argued for Clift that compensation of one account against the other did not take place unless in the same litigation, and that where the debt was extrinsic, as here, compensation did not take place at all.

Cases cited—*Gordon* v. *Davidson*, June 13, 1865, 3 Macph. 938; *Stothart* v. *Johnston's Trustees*, Dec. 3, 1822, 2 Mor. 549; *Warburton* v. *Hamilton*, May 30, 1826, 4 S. 639; *Graham* v. *M'Arthur*, Nov. 28, 1826, 5 Shaw 46.

The Court refused the application, on the ground that the two actions being about the same subject-matter, and between the same parties, might have been conjoined, and that if they had there could have been no doubt, on the authorities, that the second account compensated the first.

Counsel for Clift—J. C. Smith. Agent—W. N. Masterton.

Counsel for Portobello Pier Company—A. J. Young. Agent—Thomas Lawson, S.S.C.