absolute and unqualified terms in which the decision of *Greig* v. *Adamson* is stated in the rubric may have led the parties here to think that that case had been disregarded in deciding the case of *St Cuthbert's* v. *Cramond*. For it is there stated, not merely that the widow by her second marriage had lost the settlement of her first husband, but that she "had acquired that of her second husband not only for herself, but also for the pupil children of her previous marriage." Now, I do not think that any such broad rule relative to the children was laid down in *Greig* v. *Adamson*. And I am unable to find in the opinions of the majority of the Judges in that case any such rule as is here contended for—namely, that immediately on the second marriage of a woman the pupil children of her first marriage, who had acquired their father's settlement, are transferred in a body to the settlement of the second husband, and lose the settlement they had acquired through their own father. If the opinions are carefully examined—particularly that of Lord Deas, which was concurred in by the majority of the Court—it will be seen that the judgment is put distinctly on this, that the mother was pauperised by having to support the children of both marriages, and as she was truly the pauper, and was obliged to go against the parish of her second husband, the children in family with her should in the meantime be relieved by that parish also, thus applying the principle of *Barbour* and *Adamson* that families should not be separated where it can possibly be avoided. But it leaves the question open what the rule is to be where the mother is dead before relief is required for the children. In such a case I see nothing in the opinions in *Greig* v. *Adamson* to indicate that the parish of the mother or of the stepfather's settlement would be liable for their support instead of the parish of their own father's settlement. And I can see nothing in the circumstances of the present case to take it out of the broad general rule that a legitimate child, being a pupil, follows the settlement of its father whether the father is dead or is alive.

Lord Deas concurred, and said — The question here relates to the settlement of a pupil whose father is dead, and whose mother married again, and what is to be settled is, How far the settlement of the child which it acquired by the death of its father is altered by the subsequent marriage of the mother? I hold that it is settled that where the mother after the husband's death maintains her family, she being a pauper, the settlement of the pupil children must follow hers. This was particularly laid down in *Greig* v. *Adamson*, and in that case there was an opinion expressed as to the present question—namely, How far the pupil's settlement would be affected by the subsequent marriage of the mother? and I find that there I said that the settlement of the pupil child can be no ways altered by the subsequent marriage of its mother.

Lord Shand—The claim of Govan, as the parish of the pupil's father's birth, to be relieved of the maintenance of the pupil, is rested on the ground that the pupil after her father's death acquired a new settlement by the subsequent marriage of her mother, who acquired her second husband's settlement. If the pupil had acquired her mother's settlement, and lost that by non-residence, the question would arise whether the pupil child fell back on her father's birth settlement in Govan or her own birth settlement in the Barony parish? That question, in my opinion, does not arise, for I think the case of Govan fails, because on the authorities I do not think the pupil did acquire a new settlement by the second marriage of her mother. The dicta seem to come to this, that the mother having survived the father, and being the keeper of the children, they must during her lifetime be charged on her parish. But the pupil still has a settlement in the place of the settlement of its father, and though there may be a temporary suspension of that settlement in following that of the mother if she is a pauper, that suspension is merely temporary so long as the child is in pupilarity—it never really loses its hold on the father's settlement. But on the mother's death the child's hold on the mother's parish is at an end, and she takes her father's settlement. The result is that we carry out the principle laid down in the leading case of *Barbour*.

Lord President concurred.

The Court adhered.

Counsel for Inspector of Govan Combination (Reclaimer)—Guthrie Smith—Alison. Agent—John Gill, S.S.C.

Counsel for Inspector of Barony—Burnet—Low. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for Inspector of Girvan — Asher — Moncreiff. Agent—John Carment, S.S.C.

Friday, March 8.

FIRST DIVISION.

[Lord Rutherfurd Clark, Ordinary.

DUNCAN *v.* THE DUNDEE, PERTH, AND LONDON SHIPPING COMPANY.

Shipping Law Salvage—Owners of Ship salved found Liable for Salvage both on the Ship and on the Cargo.

Where a ship employed in the coasting trade in Great Britain was placed in great danger through the fault of the owners' servants, and was salved by another vessel—*held* (1) that the owners could be proceeded against in an action directed against them personally for salvage of ship and cargo; (2) that they were liable for salvage both on the ship and on the cargo, though they were not owners of the cargo, for, being common carriers, they were responsible for the safe delivery of the latter, and therefore the aid given by the other ship was really rendered to them in respect of it as well as of the ship.

Remarked that a Court of Appeal is very unwilling to disturb the finding of an Inferior Court as to the amount of salvage to be paid, as that question is very much one of discretion.

This action was raised in the Court of Session by Peter Miln Duncan, merchant and shipowner

in Dundee, owner of the ship "Harvest Queen," and others, the master and crew of the said vessel, against the Dundee, Perth, and London Shipping Company, owners of the ship "Anglia," which traded between Dundee and London, and had for its object the enforcing of a claim of salvage against the said company, the "Harvest Queen" having rescued the "Anglia" while in a sinking state off the Fern Islands, and towed her into Dundee. The facts of the case will be found in the note of the Lord Ordinary and in the opinion of the Lord President. The Lord Ordinary (RUTHERFURD CLARK) found that the owners of the "Anglia" were liable for salvage both on the ship herself and on her cargo. He added this note:—

"*Note.*—On the 19th November 1876 the 'Anglia' left Dundee on a voyage to London, with a general cargo and about twenty passengers. It has been proved to the satisfaction of the Lord Ordinary that in the course of that voyage she struck on the Tours or Parkdyke Rock. The consequence was that she carried away her rudder and stern-post, and that a hole or holes were made in her stern; but the bulkhead, immediately in front, so far prevented the flow of water into the hold that it could be readily kept down by the pumps.

"After she struck, the 'Anglia' continued under steam for a short time, until the injury which she had sustained was discovered. She then hoisted a signal of distress, and the 'Harvest Queen,' which happened to be in her near neighbourhood, went to her assistance and took her in tow. Thereafter the 'Matin' of Dundee came up, and at the request of the master of the 'Anglia' a hawser was run out from the 'Anglia' to the 'Matin.' Both vessels then towed the 'Anglia' to St Abb's Head, when, the 'Matin's' tow rope having broken for the third time, the 'Matin,' at the request of the 'Anglia,' proceeded to Dundee to bring out a tug to help the 'Anglia' over the bar of the Tay. The 'Harvest Queen' towed the 'Anglia' to the harbour of Dundee until she was placed in safety, but in crossing the bar the 'Anglia' had the assistance of the 'Fairweather' tug, which had been sent out by the 'Matin' for that purpose.

"The point at which the 'Anglia' was taken in tow by the 'Harvest Queen' cannot be precisely ascertained. According to the evidence given by the master and crew of the 'Harvest Queen,' the 'Anglia' was then less than half-a-mile from the Goldstone Reef, while the master and crew of the 'Anglia' place her a considerable distance to the north of that point. The Lord Ordinary is disposed to rely most on the testimony of the master of the 'Matin,' who took the bearings of the 'Anglia' immediately after he had arrived on the scene, and when her position could not then have been materially changed. According to this evidence the 'Anglia' was nearly two miles to the north of the Goldstone Rock.

"But whatever was the exact position of the 'Anglia,' she was undoubtedly in peril. Having lost her rudder and stern-post, she was for the time absolutely helpless, and she was in the vicinity of very dangerous reefs. A light wind was blowing from the shore, but the direction of the swell, which was a five or six foot sea, was from the north-east. The anchorage was bad, and a strong current, if it had not already set in, was on the eve of setting in to the southward. It may be that the makeshifts to which seamen resort, and in which they are so very ingenious, might have enabled the crew of the 'Anglia' to extricate her from the danger in which she was undoubtedly placed. But there could be no certainty, and common prudence imperatively demanded that in order to her safety the assistance of the 'Harvest Queen' should be required. In these circumstances, it was not disputed that the 'Harvest Queen' was entitled to salvage.

"A question was raised, though not much pressed by the defenders, viz., whether the 'Harvest Queen' was to be considered the sole salvor? That she rescued the 'Anglia' from her immediate danger, and that she was able to tow her to Dundee is beyond doubt. The only ground on which the 'Matin' can be regarded as a co-salvor is, that her assistance was required to procure a tug to help the 'Anglia' to cross the bar of the Tay. But the necessity for this service, if there was any necessity at all, arose from the master of the 'Anglia' electing to return to Dundee. The 'Harvest Queen' was able, without any assistance, to have brought the 'Anglia' to a place of safety—as, for instance, to Leith Roads—and besides, it would rather appear that the requisite assistance for crossing the bar could have been readily obtained without despatching the 'Matin' to procure it. On the whole, the Lord Ordinary is disposed to consider the 'Harvest Queen' as the sole salvor. At anyrate, the assistance rendered by the 'Matin' was not material.

"The pursuer urged that the salvage was performed at considerable risk to the 'Harvest Queen' and her crew. It cannot be said that there was none, but in the opinion of the Lord Ordinary it was small.

"A legal question of considerable importance has been raised, viz., Whether the defenders are liable for the salvage due by the cargo, of which they were not the owners? The pursuer alleges that the defenders undertook the responsibility of the owners of the cargo. But in the opinion of the Lord Ordinary they have failed to prove any agreement or undertaking to that effect. The case must therefore be disposed of apart from that allegation.

"The defenders contend that salvage can be recovered from the owner only, while the pursuer maintains that as the defenders were in fault, and would have been liable for the value of the goods if lost, the services rendered by the pursuer were for the sole benefit of the defenders, and that, in consequence, the defenders are liable for the salvage on cargo.

"That the accident was due to the fault of the defenders, and not to a peril of the sea, seems to the Lord Ordinary to be beyond doubt. The rock on which the 'Anglia' struck was well known, and laid down on the chart. The day was clear, and there was no stress of weather, or other circumstances which could excuse her being out of her course. Indeed, the master hardly even attempted to justify himself, and all counsel could say in his favour was that the deviation was not great.

"It follows that if the goods had been lost, the defenders, as carriers, would have been responsible for their value. But the theory on which salvage is due is, that the services rendered have

prevented the loss. Hence the benefit of the services rendered by the pursuer has enured solely to the defenders. The rule laid down by Professor Bell (1 Com. p. 642) is this:—'The reward must be given by those who receive benefit, and who would have suffered the loss from which the exertions of the salvors have saved them.' In *Cox* v. *May*, 4 M. and S. 152, Lord Ellenborough said—'Salvage is a compensation to the salvors, not merely for the restitution of the property which has been made by them to the prior owners (for that is properly an act of mere justice on their part), but for the risk and hazard incurred by them, and for the beneficial service they have rendered the former owners in rescuing that property from the danger in which it was involved, and the persons to contribute to that salvage are the persons who would have borne the loss had there been no such rescue, and who, of course, reap the benefit of that rescue. To form a judgment who would have borne the loss had there been no rescue, and to whom the rescue was beneficial, we must look to the interest which each party had.' On this principle the Court decided that the salvage, though calculated on the ship, freight, and cargo, was payable by the ship and freight exclusively. The reason was that the freight payable by the cargo was more than the value of the cargo, and hence that the owners of the cargo had no benefit by the salvage. It is not going further to hold that the persons who would have been responsible if the cargo had been lost are the only persons benefited by the services rendered by the pursuer, and are therefore liable for the whole salvage. If the salvage were recovered from the owners of the cargo, the defenders would, it is thought, be bound to relieve them.

"It remains to fix the amount of salvage. This seems to be left to the discretion of the Court in each particular instance. The present is certainly not one of the highest class, and in the whole circumstances the Lord Ordinary thinks he will do justice by fixing it at £1500."

The defenders reclaimed, and argued—That the form of the action was unprecedented, if not incompetent, as salvage questions should be tried by an action *in rem*, and not by a personal action of this kind; and further, that they (the owners) were not responsible for the salvage due by the cargo, of which they were not the owners, but were only responsible for the salvage due on the ship; and further, that the sum given by the Lord Ordinary was excessive.

Authorities—"*Schiller*," 1 L.R. (Prob. Div.), 473, April 24, 1877, 2 L.R. (Prob. Div.), 145; "*Pyreneese*," Nov. 20, 1863, Browning and Lushington (Admiralty), 189; "*Peace*," March 14, 1856, Swabey (Admiralty Rep.), 85; *Cox* v. *May*, 4 M. and S. 151. On the question of the amount of salvage due—Cheetah, 2 L.R. (Privy Council), 205; Boyd's Merchant Shipping Laws, 413, and cases cited in note; *Kennedy* v. *Raikes*, Practice under Judicature Act, 349.

The respondent argued—That any other form of action than that adopted would have been extremely inconvenient and harsh, as the vessel, being a coasting trader, there were hundreds of owners of small quantities of goods, and that had an embargo been laid on the cargo till the salvage was paid it would have been a great hardship on the owners. That if the cargo had been lost the owners of the vessel, as common carriers, would have been liable for the value of the cargo, and that therefore the aid given by the "Harvest Queen" was in reality given to the company both as owners of the ship and as liable for the cargo; and further, that the accident was due to the fault of the defenders' servants.

Authorities—"*Glenduru*," 3 L.R. (Priv. Coun. App.), 589; "*Scindia*," 1 L.R. (Priv. Coun. App.), 241; Lord Ellenborough's judgment in *Cox* v. *May*, *supra*.

At advising—

Lord President—This action has been raised for enforcing a claim for salvage made by the master, owners, and crew of the ship "Harvest Queen" against the owners of the ship "Anglia." The "Anglia" is engaged in the coasting trade, and plies between Dundee and London. On the 19th November 1876 she started on her voyage with passengers and a mixed cargo on board. On that voyage she made a deviation from her course, and struck on the Parkdyke Reef, situated north-west of the Fern Islands. The damage she suffered was considerable—her rudder and stern-port were carried away—and in consequence of these damages she would in ordinary circumstances have been sunk. But she was, it happened, protected by a bulkhead near her stern, which, though not absolutely watertight, was nearly so, and so far prevented the flow of water into the hold that it could be kept down by the pumps. But it must be observed that a rudderless ship on that coast, where there are many sunken reefs, and navigation always requires great attention, is necessarily in a position of great danger; and it is impossible to read the evidence without being convinced that had no aid been brought to her she would have been lost. It is needless to go carefully over the evidence, as the general statement cannot be disputed that had the ship not been rescued she would have been totally lost. The "Harvest Queen" very properly came to her rescue, and it is not disputed that salvage is due, but the defenders dispute the value of the service and the amount of danger incurred by the "Harvest Queen."—the amount of danger in which the "Anglia" really was, is also in dispute.

The "Harvest Queen" was a vessel of considerable size and burden, and her value is about £8000. Now, it is always a matter of risk for a ship to go out of its course, as in this case, for the "Anglia" was out of her course, and to go to her the "Harvest Queen" was also obliged to leave her course. Some risk, then, there must have been. I think that the risk was considerable. There is another circumstance relied on by the defenders, namely, that the rescue was not due to the "Harvest Queen" alone, but also to another ship, "The Matin;" and the question is, Was the "Harvest Queen" only entitled to reward as part-salvor. I think, with the Lord Ordinary, that the "Harvest Queen" is entitled to be looked upon as sole salvor. It is quite true that another ship did come, but it was after the "Harvest Queen" had towed the "Anglia" into a place of safety. The only question we have really to settle is, What salvage is due?

But there are one or two points in law on which a few words must be said. In the first place, it is maintained that this mode of enforcing a claim of salvage is unprecedented, if not incompetent — that a claim such as this should always be a proceeding *in rem* by attaching the vessel and cargo. I do not know any authority for holding that view; on the contrary, in our own records I find cases of personal actions for salvage—that is to say, the masters and crews of one ship proceeding against the owners of the other—and, seeing no difference in principle, I do not feel called upon to sustain that objection.

A more important objection is stated to the claim being made against the owners of the rescued ship only, and not against the owners of the cargo as well, on the ground that the salvage can only be claimed against the owners in respect of the ship, and not of the cargo—that is to say, the owners are not responsible for the services rendered in salving the cargo. At first sight that appears very plausible and formidable, and were we dealing with a case of salving a vessel trading with a foreign port, and carrying cargo under a charter-party or bills of lading, I think great weight would be attached to the objection. But the circumstances here are very peculiar. In the first place, this vessel is in the coasting trade, and her owners are clearly in the position of common carriers, and that in a different sense to the owners of a foreign vessel, for the latter carry from one port to another under a charter-party or bill of lading; but here the owners merely carry a mixed cargo, belonging to many people, not subject to any special contract, and are merely carriers under the verbal contract arising from delivery of goods to a common carrier, and the obligation is to carry the goods, not to be delivered at the ship's side, but at the place to which they are addressed. Now, as the ship's cargo belonged to some hundreds of owners, had they all been obliged to be called it would have been almost impossible to do so, and if, on the other hand, the ship and cargo had been attached, the consequences would have been most inconvenient. How could each of the owners have found security for his part of the cargo, and how could such a case be worked out. This may arise from the fact that the nature of the trade is to put salvors in a bad position, but it would be much to be regretted if there were no means of enforcing a claim against owners of cargo.

But there is another element in this case which relieves us from this embarrassment. In No. 9 of the condescendence it is averred—"The said ship 'Anglia' struck as aforesaid, and the said ship, with the crew, passengers, and cargo on board, were exposed to the danger of being lost through the fault of the defenders or those representing them on board said vessel and in command thereof. The captain of the said vessel had, in particular, taken a course too near the shore, and one which was in violation of the sailing directions generally observed on the east coast. An inquiry into the circumstances under which the 'Anglia' struck as aforesaid was held in Dundee in or about the month of December 1876, on an order issued by the Board of Trade, under which it was found that said vessel struck as aforesaid through the fault of the captain in charge thereof, whose certificate was accordingly suspended by the said court of inquiry." No doubt this is not admitted, but I think it is quite proved by evidence, and we must take it as a fact and as an essential part of the pursuer's case that the disaster was the result of the master's misconduct, for whom the owners are of course responsible. That being so, it follows as a legal consequence that the owners of the ship would have been answerable to the owners of the cargo for the loss of the cargo had it been lost, and from this it is argued with great reason that the salvage was given for the benefit of the owners of the ship both for the ship and for the cargo. In short, but for the services rendered, both would have been lost to the owners just as if they were owners of both. They had undertaken to deliver every article in London, and if they did not so deliver them they were answerable for the value of that part which was not delivered. Now, what answer can be made to that? It might have been said that they were within the exception of the act of God, perils of the sea, or the Queen's enemies. But then there is the reply—You were in no peril of the sea except such as was brought about by your own misconduct; and on that ground the liability for the loss of the cargo is clear. The master of the "Anglia" then received as a common carrier goods to be carried to London belonging to many unconnected owners. If he had lost the cargo he would have been answerable; and the salvors saved the ship and cargo for him, and enabled him to tranship his goods, and to deliver them. What would have been the consequence if the pursuers had laid an embargo on the goods, and not allowed transhipment until the salvage was paid. I cannot fancy anything more inconvenient or harsh, and it is said that because the salvors did not do that they have lost all claim to enforce salvage. I cannot listen to that. I think they are entitled to the claim for the whole salvage against the present defenders.

As to the amount of salvage due, I should be little inclined to interfere with the award of the Lord Ordinary, even if I thought his estimate higher or lower than the sum at which I should have set it; but I think that is quite proper, and cannot say that I differ from his view at all. I am therefore for adhering.

Lord Deas concurred, and said—I am inclined to doubt whether the proof of misconduct on the part of the master of the "Anglia" is an essential part of the pursuer's case. No doubt they aver the misconduct, but I am not sure that there was any necessity for them to aver it, for common carriers are bound to take and deliver goods, and your Lordship has very clearly shown that the defenders were nothing more than common carriers. As regards the amount of salvage, that must be fixed in a rather arbitrary way—that is to say, the best discretion must be used. It would be a very strong measure to interfere with the discretion of the Lord Ordinary, and I have no wish here to do so.

Lord Mure concurred, and said—I am not prepared to say that the fact that the defenders were common carriers is not sufficient to make them liable, but the pursuers' case is not rested on that ground alone, but also on the other ground that the loss was due to the fault of the master. As regards the amount of salvage due, various cases

were referred to, and they all seemed to me to show that though Courts of Appeal are unwilling to interfere with the award made in an Inferior Court, yet that in some cases they would do so if the award was in excess of that justly due. But further, they show that a change is very seldom made. I think, however, that here the decision of the Lord Ordinary is very fair.

Lord Shand concurred.

The Court adhered.

Counsel for Pursuer (Respondent)—Solicitor-General (Macdonald)—Trayner. Agent—Robert Menzies, S.S.C.

Counsel for Defenders (Reclaimers)—Dean of Faculty (Fraser)—Guthrie Smith. Agent—Henry Buchan, S.S.C.

Saturday, March 9.

FIRST DIVISION.

[Sheriff of Ayrshire.

FULTON *v.* EARL OF EGLINTON.

Succession—Service — Exhibition ad deliberandum *—Writ.*

A party who asks for exhibition of a charter *ad deliberandum* must show that he has an interest to do so.

Circumstances *held* insufficient to establish that a party had such an interest.

William Stephen John Fulton, described as nearest and lawful heir of line in general to the deceased James Fulton, farmer in High Warwickhill, in the parish of Eglinton, presented this petition in the Sheriff Court of Ayrshire, against the Earl of Eglinton, praying the Court to ordain the defender to deliver to the pursuer, or otherwise to produce and exhibit to the pursuer, a Crown charter of the lands and barony of Eaglesham and Eastwood in favour of Archbald Lord Montgomerie, Eleventh Earl of Eglinton, and the other heirs therein mentioned, dated on or about 23d February, and sealed on or about 8th May 1778.

The pursuer stated that he had been served nearest and lawful heir of line in general to the deceased James Fulton, who was his great grandfather. He further stated that "by the charter of registration under the Great Seal of the lands, lordship and barony of Eaglesham and Eastwood, and others, in favour of Archbald Eleventh Earl of Eglinton, dated 23d February 1778, written to the Seal and registered 8th May 1778, the lands, lordship, and barony of Eaglesham and Eastwood, and others, were granted and conveyed to the said Archbald Eleventh Earl of Eglinton, and the heirs-male of his body, whom failing to the deceased James Fulton or Fultoune, farmer in High Warwickhill, and the heirs-male of his body;" also that the eleventh Earl died on 30th October 1796 without male issue, and that he, as nearest and lawful heir-male of the body of James Fulton was entitled to succeed to the said lands. He pleaded,—"The pursuer as heir-male of line in general to the deceased James Fulton or Fultoune, his great-grandfather, and as such entitled to succeed as substitute heir of tailzie to the lands, lordship, and barony of Eaglesham and Eastwood and others, and the lands of Helenton Mains, is entitled to delivery, or at least to production and exhibition as concluded for."

The defender stated that he did not know of the existence of any such deed, but that he had in his possession a "charter of registration by Archbald Earl of Eglinton of the lordship of Eaglesham, &c., dated 23d February 1778, written to the Seal, registered and sealed 8th May 1778, in favour of Archbald Earl of Eglinton, and the heirs of his body whom failing to the heirs destined to succeed to the lands and others thereinafter disponed by the former settlement thereof," a charter of the same date as that which the pursuer asked to have exhibited. He pleaded, *inter alia*, that the action was irrelevant, and that the pursuer had no title to insist.

The Sheriff-Substitute (Paterson) repelled the defender's preliminary pleas, but on appeal the Sheriff (Campbell) gave effect to them, and dismissed the action.

The pursuer appealed to the Court of Session, and when the case came up first, was ordered to amend his summons to the effect of deleting the conclusion of delivery, and adding to the conclusion for exhibition "in the hands of the Clerk of Court," and further to amend his statement of facts.

Argued for him—According to the general rule the pursuer was entitled to the best evidence. This deed was not *in publica custodia*, but in the hands of a private party, and the pursuer was entitled to see the deed itself. *Alva* v. *Freeholders of Stirlingshire*, M. 8857, note. The heir in apparency was entitled to see all deeds that might give him the means of determining whether he was to take up the succession or not. This had been so held even where no particular deed was condescended on, so that the discrepancy betweeen the description of the deed given in the prayer of the petition and that given in the condescendence was immaterial—*Adair*, M. 3992; *Swinton*, 1633, M. 4006; *Pringle*, M. 4019; *Bankton*, iii. 5, 7; and corresponding passages in Stair and Bell's Principles.

The pursuer offered, if the Court thought it expedient, to place the deed in his possession in the hands of the clerk for inspection by the Court. It was stated for him at the discussion that James Fulton predeceased the eleventh Earl of Eglinton and besides that the records showed the destination to be that which the defender said it was, not that which the pursuer maintained.

At advising—

Lord President—The Sheriff on 17th January last sustained the defender's 4th and 5th pleas-in-law, which are pleas objecting to the relevancy of the action and the title of the pursuer; then he found that "the pursuer has not set forth a sufficient title to sue, and that his statements on record are not sufficient to support the prayer of the petition;" and accordingly he dismissed the action. I am of opinion that the Sheriff was right. But the case is not exactly in the same position as when that interlocutor was pronounced, for we have had an amendment of the record since the case came here, and we have