right of succession had been considerably reduced in value—that is, reduced to the price for which she stipulated—then her executor would have taken up merely the purchase price or the balance unpaid as part of the executry estate. But she had not sold her right of succession, and accordingly she died leaving her executor to take up the full share of Thomas Turnbull's estate to which she was entitled under the deed of agreement as part of her succession. The executor thought fit to sell, not the whole right of succession, but his share of that right as one of Janet Pringle's next of kin. I think that sale cannot make any difference upon the right of the Crown to residue-duty. The residue-duty is payable upon the full amount of moveable estate which Janet Pringle left, and the Crown's right cannot be affected by a sale of either the whole or a part of that executry estate so as to limit the claim to duty to the purchase price only. The purchaser or assignee to the executor's right when he demands payment of the estate which he has so purchased uses the executor's title as giving him right to the money, and accordingly it is plain that the executor, as executor, practically draws the whole residue whatever may be the price at which he may have sold it. That being so, it appears to me to be clear that the Crown's right to residue-duty is a right not limited in any way by the sale which the executor has made, but covers the whole of the residue to which Janet Pringle's executor had right whether the executor sold it or not.

The following interlocutor was pronounced:—

"The Lords having heard counsel on the reclaiming note for the defender Andrew Pringle against Lord Curriehill's interlocutor, dated 18th March 1878, Recal the said interlocutor: Find that the stamp on the inventory given up by the defender as executor of the deceased Janet Pringle on 5th February 1863 does not truly express the amount of the inventory-duty payable in respect of the moveable estate of the deceased: Find that the sum of £20 stated in the said inventory as the value of the reversionary interest or expectancy belonging to the said executry estate under the deed of agreement therein mentioned is a merely nominal and temporary valuation made by the executor for the purpose of enabling him to obtain confirmation: Find, of consent of the pursuer, that the said reversionary interest or expectancy must, for the purpose of fixing the amount of stamp or inventory-duty, now be valued as at the date of giving up the inventory on 5th February 1863, according to the price which it would then have realised if exposed for sale: Find that the residue-duty falls to be calculated on the true amount of the residue of the moveable estate of the deceased as it has been now or shall be realised and ascertained: Find that the amount of the said residue cannot be affected by the fact that one-half of the said reversionary interest or expectancy was sold by the executor before the death of the party on whose death it was contingent: With these findings, remit to the Lord Ordinary to proceed further as shall be just, reserving expenses, but with power to the Lord Ordinary to dispose of the expenses in the Inner House as part of the expenses in the cause."

Counsel for Pursuer (Respondent)—Solicitor-General (Macdonald)—Rutherfurd. Agent—Solicitor of Inland Revenue.

Counsel for Defender (Reclaimer)—Balfour—Rhind. Agents—J. L. Hill & Co., W.S.

Saturday, June 15.

FIRST DIVISION.

[Sheriff of Ayrshire.

CROZIER *v.* MACFARLANE & COMPANY.

Cessio Bonorum—*Competency of a Petition—Where there was no Condescendence or Pleas-in-Law—Sheriff Courts Act* 1876, (39 *and* 40 *Vict. cap.* 70), *secs.* 2 *and* 6.

A petition for *cessio bonorum* is incompetent unless a condescendence and note of pleas-in-law be annexed thereto.

A petition for *cessio bonorum* was presented in the Sheriff Court of Ayrshire. There was no condescendence or pleas-in-law appended. The Sheriff (CAMPBELL), holding that the petition was for that reason incompetent, dismissed it. He added the following note to his interlocutor:—

"*Note.*—The objection which has been sustained is founded on the 6th section of the Sheriff Courts Act of 1876, which provides that every action in the ordinary 'Sheriff Court shall be commenced by a petition in one of the forms as nearly as may be contained in Schedule A, annexed to this Act.'

"Now, in the first place, there is no doubt that the petition in question is not framed in the terms prescribed by that Act; and

"In the second place, it is clear that the words of the Act are imperative.

"The only question therefore is, whether the words above quoted, viz., every action in the ordinary Sheriff Court, embraces actions of *cessio;* and if they do, this action has been rightly dismissed.

"The Sheriff is of opinion that the process of *cessio* is an action in the ordinary Sheriff Court within the meaning of the statute.

"1st, The title to the Act proposes to deal with the administration of justice only in civil causes in the ordinary Sheriff Courts of Scotland.'

"2dly, Section 2d enacts that, 'unless where otherwise provided, this Act shall only apply to civil processes in the ordinary Sheriff Court.'

"3dly, In the interpretation clause (sec. 3) the word 'action' is interpreted to mean and 'include every civil proceeding competent in the ordinary Sheriff Court.' And this is held to include all summary actions as well as ordinary ones (*M'Dermott* v. *Ramsay*, 9th December 1876, 4 Rettie 217).

"But it is said that this process of *cessio* is a special kind of action, and not to be dealt with as 'a civil proceeding in the ordinary Sheriff Court.'

"This view, however, is not countenanced by the Act; under the express heading of 'special actions,' are classed 'multiplepoindings' and 'processes of *cessio*.'

"But there can be no doubt that one of these classes, viz. 'multiplepoindings,' is within the 6th section of the statute, for one of the forms given in Schedule A is expressly applicable to multiplepoindings.

"The fact, therefore, of processes of multiplepoinding and *cessio* being classed as special actions 'does not exclude them from the operation of the 6th section of the Act, and does not in the least imply that they are not to be deemed actions in the ordinary Sheriff Court.' Indeed, the 26th section of the Act provides that '*cessios* shall be instituted in the Sheriff Court only,'—that is, the ordinary Sheriff Court. For then follows this provision, that 'judgments or interlocutors pronounced in such actions shall be reviewed on appeal in the same form, and subject to the like provisions, restrictions, and conditions as are by law provided in regard to appeal against any judgment or interlocutor pronounced in any other action in the Sheriff ordinary Court.' This simply implies that *cessios* are actions in the Sheriff ordinary Courts. And if so, they must come into Court in the form prescribed for other actions in the ordinary Sheriff Court.

"The 2d head of the 26th section of the Act does not deal with the form of the action at all. It refers to the 6th and 7th Will. IV. c. 56, which contains no form of petition, and all that Act requires may be as well, if not better, stated in the new form of petition than in the old and discarded one.

"In conclusion, the Sheriff would refer, in corroboration of his views, to the observations of the Lord President in the case of *M'Dermott* above mentioned."

The petitioner reclaimed.

The respondent was not called upon.

At advising—

LORD PRESIDENT—I am clearly of opinion that this petition will not do. The procedure is founded on a statute, and we cannot overlook that. By the Act of 1876 the Legislature changed the form of writ commencing actions in the Sheriff Court, and provided that "every action" shall commence subject to the provisions of section 6. Now, reading this in the light of the interpretation clause, every action includes "every civil proceeding competent in the ordinary Sheriff Court;" therefore the question simply comes to be, is a *cessio bonorum* a civil proceeding competent in the Sheriff Court? That it is a civil proceeding there can be no question, and that it is competent is very clear, for under the 26th section of the Act it is not competent anywhere else than in the Sheriff Court. The inference is too clear for dispute. I am for adhering to the Sheriff's interlocutor.

LORDS DEAS, MURE, and SHAND concurred.

The Court adhered.

Counsel for Petitioner (Appellant)—M'Kechnie—Kennedy. Agent—John Macpherson, W.S.
Counsel for Respondent—Campbell Smith. Agent—Andrew Fleming, S.S.C.

Saturday, June 15.

SECOND DIVISION.

[Lord Craighill, Ordinary.

KIDSTON AND OTHERS *v.* M'ARTHUR AND THE CLYDE TRUSTEES, ET E CONTRA.

Shipping Law—Collision—Board of Trade Regulations, Articles 7 and 20—"Riding Lights."

A steamer having grounded across part of the channel of the river Clyde, so that her bows rested on a dyke which bounded it, and her hull, which was almost submerged at high water, lay at right angles to it, exhibited during the night a single light in compliance with the directions for vessels "at anchor in roadsteads or fairways," in the 7th article of the Board of Trade regulations. Another steamer believing the light to indicate a small vessel at anchor, tried to pass between the grounded vessel and the shore which would have been her proper course, but instead of doing so she caused a collision resulting in the total wreck of the grounded steamer, and in serious injury to the other. *Held* that the 20th and not the 7th article of the Board of Trade Regulations applied, the former of which provides that nothing in the previous rules shall exonerate any ship or owner or master, &c., from the consequences of the neglect of any precaution which may be required "by the special circumstances of the case," and that in this case a single light was not a sufficient warning of the existence of an obstruction.

Shipping Law—Collision—Clyde Navigation Trustees' Liability where Collision owing to Vessel being Stranded in Fairway.

A vessel was stranded on a dyke bounding the channel of the river Clyde. The Clyde Trustees sent their official to inquire into and take precautions about her removal but the master and crew remained in control as before, and the visit was merely temporary. An action of damages at the instance of owners of a vessel which was said to have sustained damage owing to collision with the obstruction was raised against the owners of the offending vessel and the Clyde Trustees—*Held* that there was no relevant case as against the latter, and that the 56th section of the Harbour, Docks, and Piers Act 1847, was not applicable to the case in question.

This was an action concluding for payment of £7000 in name of damages. It was raised by John Pearson Kidston and others, owners of the s.s. "Toward" of Glasgow, against John M'Arthur, owner of the s.s. "Rio Bento" of London, and also against the Clyde Trustees. There was a counter action at the instance of John M'Arthur, owner of the s.s. "Rio Bento" against the owners of the "Toward" for £4000.

The statements and pleas of the respective owners of the two vessels sufficiently appear below.

With regard to the other defenders, the Clyde Trustees, in the action at the instance of the owners of the "Toward," it was averred that their jurisdiction as trustees under the Clyde Navigation Consolidation Act 1858, sec. 75, included the whole