"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

channel of the river forming the harbour, and extended further down the river than the place where the collision occurred. Section 76 of that Act was further set forth, which enacted that the undertaking of the trustees consisted in the deepening, straightening, enlarging, &c., the river and harbour, the forming banks and fences, the erecting beacons and buoys, such as might be necessary or expedient for the use and guidance of vessels. It was further set forth that by section 56th of the "Harbours, Docks, and Piers Clauses Act 1847" (which was one of the clauses incorporated with the "Clyde Navigation Consolidation Act 1858), power was given to the harbour-master appointed by any river or harbour trust to remove any wreck or other obstruction to the harbour, dock, or pier, or the approaches to the same, and it was provided that the expense of removing any such wreck or obstruction should be repaid by the owners of the same, and the harbour-master might detain such wreck for securing the expenses, and on non-payment of such expenses on demand might sell such wreck, and out of the proceeds of such sale pay such expenses, rendering the overplus, if any, to the owner. "(Cond. 7.) The said trustees have from time to time levied rates or duties under the said Act, and they were at the date of the occurrence after mentioned, and still are, in receipt of such rates or duties, and in the possession, charge, control, and management of the said river and harbour and works connected therewith. The annual revenue of the said trustees from such rates exceeds £180,000, and the funds under their control are thus amply sufficient to enable them to keep the navigation of the said river free from any dangerous obstruction. It has been and is the practice of the said trustees to take measures for marking any unavoidable obstruction in the river by boats, buoys, and lights, and for removing such obstruction without undue delay, and also through their harbour-masters, pilots, and other officials, to give warning of such obstruction to those in charge of vessels coming up or going down the river. The pursuers, who have paid and are paying in respect of the said steamer "Toward" rates to the said trustees to the extent of £250 or thereby per annum, relied on the said trustees taking all proper and necessary measures to keep the navigation of the said river in a free and safe condition as aforesaid."

The Lord Ordinary (CRAIGHILL) pronounced the following interlocutor:—

"*Edinburgh, 27th December* 1877.—The Lord Ordinary . . . . Finds, as matters of fact—(1) That in the morning of the 18th of March 1877, and for two previous days, the 'Rio Bento,' which was 120 feet long and of 28 feet beam, lay stranded in the Clyde between Dunglass and Dumbuck; (2) That her bows were across the dyke which here runs along the south side of the river, and the rest of her hull, which was almost entirely covered at high water, was at right angles to the dyke on the bed of the stream, passage up or down where she lay being as a consequence rendered impossible; (3) That the distance out from the dyke across which passage was thus obstructed was over 100 feet, and all of this but the 30 feet next to the dyke, which had depth of water only for smaller vessels, was part of what is called the navigable channel, which here is about 380 feet wide, and the minimum depth of which is 14 feet, could be and was at high water navigated by vessels of large size and draught, and in particular by vessels of larger size and drawing more water than the 'Toward'; (4) That the 'Rio Bento' though stranded remained in charge of her master and crew; (5) That the only light which was shown on board the 'Rio Bento' on the said morning was a white light, in a globular lantern of more than 8 inches in diameter, suspended from a part of the main rigging over the taffrail or stern, and about 10 feet above the level of high water, and there was no other warning given or precaution taken to make those on board other vessels sailing up or down aware that, as she lay, she obstructed to so large an extent what was part of the ordinary navigable channel; (6) That the said light is the light required by the article 7 of the Board of Trade Regulations for preventing collisions at sea to be exhibited by ships, whether steam ships or sailing ships, when at anchor in roadsteads or fairways, and the warning to be given to other vessels by those in charge of a vessel stranded in a roadstead or fairway is not by that rule prescribed; (7) That by article 20 of said regulations it is provided that nothing in these rules shall exonerate any ship, or the owner or master or crew thereof, from the consequences of the neglect of any precaution which may be required by the special circumstances of the case; (8) That on said morning, between two and three o'clock, the tide flowing and being nearly full, the 'Toward,' which was 28 feet in beam, was on its way up the Clyde, her draught of water at this time being 8 feet 2 inches forward and 13 feet 7 inches aft, and when more than a mile below the place where the 'Rio Bento' lay stranded, the light shown by the latter vessel was sighted by the master and by others on the outlook on board the 'Toward'; (9) That he and they were unaware of the stranding of the 'Rio Bento,' and said light was taken by them to be the anchor light of one of the scows or small vessels which frequently drop anchor during flood-tide on their way down the river; (10) That after said light was sighted, the speed of the 'Toward' was reduced first to half and next to slow, and her helm was ported a little, that she might pass to the south of the vessel supposed to be riding at anchor and showing the light; (11) That this course was chosen because the 'Toward' believed there was room for passage between said vessel and the dyke, and because the south side is in ordinary circumstances the side of vessels going up the river; (12) That to prevent injury from surge to the vessel supposed to be at anchor, the engines of the 'Toward' were stopped before she came abreast of the light, as is customary when steamers are about to pass scows or small vessels lying in the river, and immediately afterwards it was discovered that passage on the south side of that light was obstructed by a vessel which lay stranded between that light and the dyke; (13) That thereupon orders were instantly given to starboard the helm, that the 'Toward,' if possible, might be brought round to the north and pass clear of the obstruction upon that side, but before this order could be fully carried out the 'Toward' struck the 'Rio Bento,' passed so far over her, and remained fixed upon her; (14) that in consequence of this collision the 'Rio Bento' was

broken in two, and became a wreck, and the 'Toward' was seriously injured . . .; (15) That it has not been proved that at and prior to the time of said collision the 'Toward' was insufficiently manned or negligently or improperly navigated, or that there was any contributory fault imputable to those in charge or to the owners of that vessel; (16) That the light exhibited as aforesaid on board the 'Rio Bento' was not in the circumstances sufficient as a warning that passage up and down the river was obstructed to the south of said light, that the failure or neglect to give such warning was a fault on the part of those in charge of that vessel, and that this fault was the cause of said accident; (17) That the said accident occurred without the actual fault or privity of Mr M'Arthur, sole owner of the 'Rio Bento:' Finds, as matter of law, the facts being as above set forth—(1) That the owners of the 'Toward' are entitled to recover damages from the owner of the 'Rio Bento;' and (2) that the owner of the 'Rio Bento' is not entitled to recover damages from the owners of the 'Toward:' In the second place, and with reference to the grounds of action maintained by John Pearson Kidston and others, the owners of the 'Toward,' against the trustees of the Clyde Navigation, incorporated by Act of Parliament, and to the defences for these trustees, Finds, as matter of fact—(1) That the 'Rio Bento' was in charge of her master and crew, and was not in charge of the trustees of the Clyde Navigation at the time of said collision; and (2) that said collision was not caused by fault on the part of said trustees: Finds, as matters of law, that the facts being as above set forth the trustees of the Clyde Navigation are not liable in damages to the owners of the 'Toward' on account of loss suffered by the latter from said collision of the 'Toward' with the 'Rio Bento:' Appoints the cause to be enrolled that these findings may be applied, and an interlocutor exhausting the conclusions of both the conjoined actions may be pronounced; reserving meantime all questions of expenses."

The defender (M'Arthur) reclaimed, and argued —Mere negligence on the part of the victim would not relieve the guilty party unless that negligence rendered the accident unavoidable. The "Rio Bento" did show a "riding-light" for vessels at anchor according to Admiralty regulations. The regulations of the Merchant Shipping Act positively prohibited the carrying of any other lights than those imposed. The provision relating to vessels at anchor was intended to apply to vessels stationary from any cause whatever. The duty of the captain of the "Toward" was to clear the one light that was shown. [Lord Justice-Clerk—An open boat attached to a fishing-net has only one light]. That was so, and the reason was the stationary position of the boat.

Argued for the respondents (Kidston and others)—The owner of the "Rio Bento" was privy to what happened and was liable to the full extent. The Clyde Trustees for their part failed in taking due care to indicate the obstruction properly. That duty lay upon them as well as upon those in charge of the "Rio Bento." In point of fact, they acknowledged the obligation, considered the mode of lighting, and decided the way in which it was to be done. These trustees received all tolls and dues of the river, and by doing so were bound to attend to the navigation and keep it clear and secure. The case for the trustees came to this, that they were entitled to rely on those in charge of the stranded vessel. They must, however, show that they had made such rules as (if observed) would have prevented an accident like this. The question was whether the occurrence was of such a common kind as to impose upon the trustees the duty of anticipating the event. Here there was an obstruction more or less permanent in character. The trustees knew of its existence, they knew that the lighting was insufficient, and they were under an obligation to see that defect remedied. They were liable for mistakes just as if the profits of the trust went into their own pockets. Mere exercise of honest judgment would not free them. The greater duty of removal included the lesser duty of lighting. The 56th section of the 1847 Act applied, having been incorporated by the Clyde Act. Under that section the "Rio Bento" was an "obstruction."

Argued for the Clyde Trustees—The duty of carrying out the regulations which the Clyde Trustees were empowered to make was in the hands of those navigating the vessel (Clyde Navigation Act, sec. 119). [Lord Ormidale—Suppose a large ship, fully manned and equipped, get aground in a harbour, is the harbour-master bound to see that she is removed—in fact, bound to take command of her?] The Trustees would in that event plead the 56th section of the 1847 Act. The remoteness of this accident in question from any act of omission or of commission by the Clyde Trustees must be borne in mind. An action either against the owner of the "Rio Bento" or the Clyde Trustees was intelligible, but one against both was not so—(1) This vessel was not included under the 56th section of the 1847 Act; and (2) She was not an "obstruction" in the statutory sense. As to the first point, the Act defined where Glasgow Harbour ended; as to the second, the words used—"wreck or other obstruction"—could only mean wreck or something *ejusdem generis*. This was an attempt to fix upon the Clyde Trustees the responsibilty for the navigation of every vessel entering the Clyde. But even supposing this to have been an obstruction, was that which was given by statute to the trustees a power or a duty? Did the trustees violate an implied duty by not exercising what was stated as a power? In a statute permissive language might become a duty, as, for example, in the case of roads and their maintenance, but there was not here the surrounding circumstances sufficient to put such a construction on what the Act said. It might have been a different case had the trustees kept the "Rio Bento" a long time thus grounded, or allowed her to remain there, but they did not. She was being unloaded as rapidly as time would permit. Again, it could not be admitted that the greater duty of removal included the lesser one of lighting, and by section 57 greater powers were given as to vessels in harbour. It was said that the trustees were in fault for not making bye-laws, but the occurrence was quite unprecedented. The Clyde Trustees' official went down to see if the vessel was an obstruction, and he found her in charge of her crew. His action in no way made the crew subject to the orders of the Clyde Trustees or their officers.

Authorities—Addison on Torts, 22; *Tuff* v. *Warman*, 1858, 27 L.J., C.P. 322; *Morrison* v. *General Steam Navigation Company*, 1853, 8 Exch. 730; *The Lancaster Canal Company* v. *Parnaby*, 1839, 11 Adolp. and Ellis, 230; *Brown and Others* v. *Mallet*, 17 L.J., C.P. 227; *Harmond* v. *Pearson*, 1 Camp. 515; *The "John Fenwick,"* 3 Adm. and Eccl. Reps. 500.

At advising—

LORD ORMIDALE—I have found this case to be perplexing, not so much from any difficulty attending the legal principles which it involves as from the conflicting nature of the evidence bearing on some of the more important matters of fact upon which it depends.

The circumstances generally of the case are set out articulately and clearly in the judgment of the Lord Ordinary, who has found that the owners of the "Toward" have established their grounds of action against the owner of the "Rio Bento" but not against the Clyde Trustees. His Lordship's judgment has been reclaimed against, and we are now to determine how far it is well-founded. And this, as it appears to me, depends very much, if not entirely, upon whether, on the one hand, the fault attributed to the "Rio Bento" has been sufficiently made out by the proof; or whether, on the other hand, it was the "Toward" that was either in whole or in part in fault.

That the "Rio Bento," on the morning of the 16th of March 1877, lay stranded across the channel or fairway of the Clyde between Dumbarton and Dumbuck, with her bows on the dyke which there runs along the south side of the channel, while the rest of her hull lay almost entirely submerged at right angles to the dyke, is not disputed. Neither is it disputed that the south side of the channel or fairway across which the "Rio Bento" so lay is the usual side for vessels to take in going up the river, and that the other, or north side, is the usual side for vessels to keep in coming down the river. The parties were also agreed that the "Rio Bento" when she stranded was coming down the river, and that the "Toward" when she ran into the "Rio Bento" was going up. This, as it appears to me, is a very important feature of the case, for the very circumstance of the "Rio Bento" being on the wrong side, with her bows on the dyke, creates a strong suspicion that she must have been under bad management, and, at anyrate, being on the wrong side, it was all the more incumbent on her to adopt every reasonable means in her power of precaution and warning for the purpose of preventing other vessels going up the Clyde from running into her. This, indeed, was her duty, even supposing that it was owing to no mismanagement on her part that she had got into such a position. It is enough that from some cause or another she had got into a position so abnormal and exceptional as to render it in the highest degree unlikely if not impossible for other vessels to anticipate that there should be any such obstruction in the fairway or channel of the river. And if the cause of her getting into such a position was the state of the weather on the morning of Friday the 16th of March, that just shows that the same cause might on the morning of Sunday the 18th of March—two days afterwards—have led the "Toward" in going up the river to run into the "Rio Bento," assuming that that vessel had been allowed to lie where she had stranded without all reasonable and necessary precautions being taken to warn others of the risk and danger she exposed them to. But it was maintained on the part of the "Rio Bento" that every such precaution was in point of fact taken. It was said that she had exhibited the light prescribed for her position by the Board of Trade's rules, and that that was sufficient to have enabled the "Toward" to avoid running into her. It was also said that at anyrate no other warning was called for or necessary, and that it was the fault of the "Toward" herself, or, in other words, the reckless or negligent and improper management of her, which led to her running into the "Rio Bento." It was also maintained that in the most unfavourable view that can be taken of the case for the "Rio Bento" the "Toward" was at least contributory to the collision and the damage thence arising.

Now, in regard to the plea founded on the Board of Trade's rules, I have little or no difficulty in disregarding it. Rules 7 and 20 are the important ones. I am quite satisfied that the former has no application to the case of a vessel lying stranded as the "Rio Bento" was, but only in the words of the rule to a vessel "at anchor in roadsteads or fairways," plainly meaning a vessel afloat and riding at anchor. The 20th rule, however, which is to the effect that nothing in any of the others "shall exonerate any ship, or the owner or master or crew thereof, from the consequences of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen or by the special circumstances of the case," has, I think, a very important bearing on the present case. It is obvious that the Board of Trade in prescribing rules as to lights and other precautions found it impossible to anticipate all the various cases that might occur, and to prescribe a rule applicable to each of them. Not only was that impossible, but, as it appears to me, it would have been most hazardous in its consequences to attempt it. The only rational and safe course was that which the Board of Trade adopted, viz., to declare that the particular rules they did prescribe were not to be held as applicable in the cases above narrated.

The circumstances of the present case were very special; and presumably from the event, and supposing the "Toward" was not to blame, a single light being up above the taffrail or stern of the "Rio Bento" was not a sufficient precaution. The "Rio Bento"—a vessel of great length—was in the wrong side of the channel or fairway, and she was not afloat at anchor, but stranded, and almost submerged, except her bows, which were fixed upon the dyke lining the south side of the channel. It is in vain, therefore, I think for the "Rio Bento" to contend, that as no particular light or other precaution is prescribed for such a case she did all that was incumbent on her, by way of warning to others, by exhibiting the single light prescribed for a vessel "at anchor in roadsteads or fairways;" for, as Sir Robert Phillimore remarked in the case of the "Industrie" (Law Reports, 3 Ad. and Eccles. Cases, 308), "independently altogether of the regulations for preventing collisions at sea, those in charge of a vessel aground at night in the fairway of a navigable channel are bound by

the general navigable law, as administered in this Court, to take proper means to apprise other vessels of her position."

The weight of the evidence appears to me to support the "Toward's" contention that a single light was not sufficient in the circumstances; and why two or three or more lights, as well as other precautions, might and ought not to have been used, was not explained at the debate. The single light was not only not sufficient, but has been proved to have been misleading, for it induced the master and crew of the "Toward," in the belief—naturally and reasonably entertained I think—that there was only a scow or small vessel riding at anchor in the channel with her bows down stream, and that accordingly there was plenty of room for the "Toward" to pass up between the light and the dyke. And it is all the more inexcusable that the "Rio Bento" should have exhibited only one light, considering that her master had been expressly told by Mr Anderson, wreck agent and surveyor to the Society of Underwriters in Glasgow, a few hours before the collision, that he should have two lights, "one aft and one forward, in case any vessel should run into him." And Mr Anderson also depones—"I said I thought two lights should be exhibited all night."

[His Lordship then examined the proof, coming to the conclusion that although at one period of the night two lights had been exhibited, one of these, that on the vang, "had been improperly taken down" before the collision.]

In addition to the want of the necessary lights, I think it has also been shown that the master and crew of the "Rio Bento" were negligent, and consequently in fault, in not keeping a better look out, and using other means besides lights in order timeously to warn other vessels going up the river of the risk and danger they were exposed to. M'Donald, the only person who kept watch on board the "Rio Bento"—a circumstance of itself indicating great want of vigilance—admits that before the collision, and before the "Toward" was seen, he went below to call M'Kinnon, who was to relieve him; that he was below "three or four minutes," and that when he came up the "Toward" was so close upon the "Rio Bento" as to make it impossible then to give the warning in time to avoid the danger. That I think is the effect of M'Donald's evidence, and it is of itself about conclusive to the effect that a proper watch or look out was not kept on board the "Rio Bento," and that due precaution was not taken by her to warn others of their danger.

It is quite possible, however, that although the "Rio Bento" may have been in fault in not taking all the reasonable precautions incumbent on her, that was not the cause or the sole cause of the damage sustained by the "Toward"—that, in short, it was through the "Toward's" own fault she ran into the "Rio Bento" and received the damage she did; and that, at anyrate, she by her own conduct materially contributed to the result which happened. It cannot I think be disputed that the evidence on these points is conflicting; but from the best consideration I have been able to give it I can come to no other conclusion than that the preponderance of the proof is with the owners of the "Toward." I think it has not been proved that a proper look-out was not kept on board the "Toward," and that after seeing the single light exhibited by the "Rio Bento" she did not proceed in the belief, for which there was reasonable ground, that it denoted not a stranded ship, lying partly submerged and partly on the dyke, but a scow or small vessel riding at anchor in such a way as to leave sufficient room for her, the "Toward," to pass in the manner she attempted to do. And I also think it is not proved that in making this attempt the "Toward" did not use all the precaution, by slowing her speed and otherwise, that was called for on her part in the circumstances in which she was placed. I cannot hold, therefore, that it was owing, either wholly or in part, to her own fault that the "Toward" ran into the "Rio Bento," and I consequently concur with the Lord Ordinary on these points, and his Lordship's views regarding them have influenced me all the more that the witnesses were examined before him, and that he had an opportunity of observing their appearance and demeanour in giving their testimony, circumstances of considerable importance in dealing with conflicting evidence, especially in such a case as the present, and bearing in mind the class of witnesses he had to deal with. I may further remark that I have felt some doubt whether in such a case as this there is room for the plea of contributory fault. The "Rio Bento" was stationary, so that if the "Toward" saw or might have seen her in time, she and she only was in fault in running into danger, for the "Rio Bento" could do nothing to avoid it. But it is unnecessary to determine how far the doubt is well or ill founded, as I am satisfied with the Lord Ordinary that it was entirely owing to the "Rio Bento's" fault that the collision took place.

The only other matter requiring notice is the liability of the Clyde Trustees, who have been made defenders as well as the owner of the "Rio Bento," in the action at the instance of the owners of the "Toward." And as to this branch of the case, I also concur with the Lord Ordinary in thinking that no such liability has been established. I have indeed found it very difficult to ascertain from the record what the precise ground of liability is upon which the pursuers rely as against the Clyde Trustees. These parties were not immediately or directly concerned in the collision in any way whatever. They were not the owners of either of the vessels, and it was not by them that their masters or crews were appointed. Nor had they anything to do with their management or the objects they were prosecuting when the one got stranded and the other was run into her. And although the Clyde Trustees are vested with certain powers and intrusted with certain duties, it is neither relevantly averred nor proved that they exceeded their powers or failed in the discharge of any of their duties. The only thing which I can observe approaching a ground of action indicative of liability on the part of the Clyde Trustees is what is stated by the pursuers, the owners of the "Toward," in their condescendence, where they refer to section 56 of the Harbour Docks and Piers Clauses Act of 1847, by which power is given to the harbour-master appointed by any river or harbour trust to remove any wreck or other obstruction to the harbour, dock, or pier, or approaches to the

same. But I think it is quite extravagant to say that the "Rio Bento" was at the time and place of the collision either a wreck or obstruction to the harbour of Glasgow, or the dock or piers or approaches to the same, and indeed nothing of that kind is relevantly alleged. The "Rio Bento" was at the time of the collision in the possession and under the management of her master and crew, and the place where the collision took place was several miles distant from the harbour, docks, and piers of Glasgow.

In these circumstances, and for the reasons I have now adverted to, the judgment of the Lord Ordinary is in my opinion well founded, and ought to be adhered to.

LORD GIFFORD concurred.

LORD JUSTICE-CLERK—[His Lordship, after stating the nature of the case, and the result of the evidence as showing that blame did not attach to the "Toward" for the collision, but that it was due to carelessness on the part of the "Rio Bento," then proceeded]—On the question of the propriety or sufficiency of the light exhibited by the "Rio Bento," it cannot be denied that there is much conflict in the evidence on this subject; and if this was to be solely decided by opinion, I think the weight of testimony inclines against the proposed judgment. I attach no importance to the evidence of such witnesses as Mr Anderson and Mr Dunlop—testimony which does not impress my mind as trustworthy in point of recollection, and is immaterial if it were. The evidence of the Clyde superintendent and of Captain M'Fie and the river pilots is of a much higher class. But the simple question is not one of opinion, but one of fact—Did those in charge of the "Rio Bento," who by accident or by fault had placed an obstruction on a public highway, give sufficient warning to the public of its nature and position? I am very clear that, looking to the actual position of this stranded vessel, they did not. It is not necessary that we should lay down any general rule on this matter, but the very same considerations which go to show that the error of the master of the "Toward" was excuseable, show also that the single light exhibited was insufficient and deceptive. There might be situations in which one light so exhibited might be sufficient, but it was not so as things turned out. An impediment which in effect blocked up half the navigable channel, ought to have been intimated to the persons using the navigation, and it is idle to say it could not have been done. Anything which would have given notice that the obstruction was not at anchor would have sufficed to put the approaching vessels on their guard. If two lights would or might have been misleading, and perhaps they would, no unusual ingenuity would be required to effect so simple an object.

I concur in thinking the claim against the Clyde Trustees entirely untenable.

The Court adhered.

Counsel for the Owners of the "Rio Bento"—Maclean—Mackintosh. Agents—J. & J. Ross, W.S.

Counsel for the Owner of the "Toward"—Trayner—Wallace. Agents—Frasers, Stodart, & Mackenzie, W.S.

Counsel for the Clyde Trustees—Balfour—Asher—Robertson. Agents—Webster, Will, & Ritchie, S.S.C.

Wednesday, June 19.

FIRST DIVISION.

[Lord Adam, Ordinary.

MACFARLANE (WALKER'S EXECUTOR) *v.* MACBRAIR (WALKERS' TUTOR AD LITEM) AND OTHERS.

Writ—Delivery—Husband and Wife—Succession.

A husband out of his own funds advanced £500 to trustees of certain public harbour works, taking an assignation of the works in security in favour of himself and his spouse and the survivor of them. The assignation was found in his repositories at his death. He was survived by his wife. *Held* that there had been no delivery to her so as to divest him of the right to the sum contained in the bond in his lifetime.

Succession—General and Special Disposition.

Held that a mere general disposition of a testator's estate will not interfere with a special destination to the testator himself and his spouse and the longest liver of them, contained in a bond granted over certain harbour works in security of advances by the testator, unless there be some indication of a purpose that it should do so, apart from the general terms of the disposition.

Circumstances *held* insufficient to indicate any such purpose.

This was a multiplepoinding raised to determine certain questions as to the right of succession to part of the estate left by Alexander Walker, builder, Dundee, who died on 22d January 1877. The action was raised by the executor appointed by Mr Walker in his testament of date 5th June 1876. The purposes for which the executor was directed to hold the estate were—(First) Payment of all the deceased's just and lawful debts, deathbed and funeral charges, and the expenses to be laid out in confirming and recovering his means and estate: (Second) Payment of one-third of the free residue of his means and estate, after converting it into cash, to Mrs Isabella M'Leish or Walker, his widow; one-third equally between Ann Shepherd Walker, his daughter, and Harry Walker, his son; and the remaining one-third to his mother Mrs Ann Shepherd or Walker, residing in Wellington Street, Dundee, relict of Simon Walker, sawyer, Perth; and in the event of her predeceasing him, to his sister Mrs Jane Walker or Bell, wife of James Bell, pensioner, residing in Glasgow. Mr Walker was survived by his widow, his children, to whom Mr Macbrair was appointed *tutor ad litem*, and his mother. He left no heritable estate. His moveable estate amounted to upwards of £3000.

Among the moveable estate, and included in the condescendence of the fund *in medio*, was a bond granted by the Dundee Harbour Trustees "in