

Tuesday, October 22.

SECOND DIVISION.

[Sheriff of Perthshire.

FLETCHER v GRANT.

*Reparation—Breach of Promise of Marriage—Where Woman had previously had an Illegitimate Child.*

Where a man had promised marriage to a woman, and it had afterwards come to his knowledge that she had had an illegitimate child eleven years before, *held* that he was entitled to draw back from his promise, and was not liable in damages for failing to fulfil it.

*Observed (per cur.)* that in a case of this kind, to make good a claim of damages the pursuer would require to prove that the promise had been given or renewed after it had come to the knowledge of the defender that there had been a previous illegitimate child.

Counsel for Pursuer (Appellant)—Moncreiff.  
Agent—John Gill, S.S.C.

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

Wednesday, October 23.

FIRST DIVISION.

[Sheriff of Dumfries and Galloway.

CARSWELL v. THE NITH NAVIGATION  
COMMISSIONERS.

*Sheriff—Jurisdiction—Heritable Right—Interdict—Possessory Judgment.*

A party infett on a disposition of certain lands, "with the ground that then was or should be between the present floodmark and the river Nith," applied to the Sheriff for interdict against the removal of gravel or sand from the shore-ground belonging to him by the Navigation Commissioners of the river. They resisted the application, founding on the terms of an Act of Parliament empowering them to attend to the navigation of the river. *Held* that there was no such question of heritable title involved as to exclude the Sheriff's jurisdiction.

*Observations* on the power of the Sheriff, if there had been a competing title, to give protection against such operations by interdict pending a decision on the question of heritable right.

*River—Navigation Trustees—Power to take Ballast.*

Navigation trustees acting under a statute empowering them to maintain and improve the navigation of a river are not entitled by themselves to destroy the *solum* of the river banks by taking ballast therefrom, or by authorising others frequenting the river to do so.

This was an action at the instance of Robert Carswell, residing at Glencaple, in the parish of Caerlaverock and shire of Dumfries, who was infett on a disposition to him by Robert Thomson, dated 14th and 15th May 1868, in "All and whole

that portion of land at Glencaple erected into a village, and sometime called Thomsonstown, extending to 3 acres Scotch statute measure or thereby, with the ground that then was or thereafter should be between the present floodmark and the river Nith lying at Glencaple Quay, in the parish of Caerlaverock and shire of Dumfries." Mr Carswell applied to the Sheriff—calling as defenders the Commissioners for Improving the Harbour of Dumfries and the Navigation of the River Nith; Thomas Brisbane Anderson, solicitor in Dumfries, their clerk and treasurer; and George Little, their harbour-master—to interdict, prohibit, and discharge the defenders, and all other persons acting under their instructions or by their sanction or authority, from lifting or taking sand or other materials for supplying vessels with ballast from the shore-ground at Glencaple belonging to the pursuer. He averred—"Within a few days prior to the raising of the present action the defenders, or one or other of them, by means of carters and others employed by them or acting under their sanction or authority, unlawfully entered upon the said shore-ground belonging to the pursuer with horses and carts, lifted and carried away therefrom large quantities of sand and other material for supplying ballast to vessels frequenting the river Nith, and have otherwise injured the pursuer's said property by passing over it with horses and carts."

The defenders alleged, in the first place, that the piece of ground in question had been conveyed to the Provost and Magistrates of Dumfries by William Maxwell of Nithsdail for the purpose of making a harbour and improving the navigation of the river. They also narrated in their statements various clauses of the Act of Parliament 51 Geo. III. cap. 147, by which the Nith Navigation Commission was constituted, giving the Commissioners various powers for the "carrying on, improving, supporting, and maintaining the navigation." *Inter alia*, they averred—"To enable ships and vessels to leave the river and port it is absolutely necessary that they shall be furnished with a certain quantity of ballast to fit them to do so, and proceed upon another voyage, and it has been since the year 1811, and still is, the practice of the Commissioners and their servants, in doing and executing what they deem necessary and expedient for carrying on, improving, supporting, and maintaining the navigation of the said river, and for the preservation of the shipping therein, to permit the masters and crews of such vessels to take from the bed and shores of the said river such quantities of sea sleech, sand, gravel, stones, and material as they have required and do require for the purposes of ballast."

The pursuer, *inter alia*, pleaded—" (1) It is no part of the business of the Commissioners, and does not fall within the scope of their Act of Parliament, to supply vessels with ballast. (2) No relevant title to take ballast from the shore-ground belonging to the pursuer has been set forth by the defenders. (3) The ground in question being the property of the pursuer, and the defenders having no right to take material therefrom for ballast, he is entitled to interdict as craved."

The defenders, *inter alia*, pleaded—" (4) The right of property in the subjects in question, which is real property and heritable, and the right