the kingdom as to the requirements of ships, particularly in regard to the hull in all its parts, including the deck, hatches, skylights, ports, and the like details, they have the best means of ascertaining what is desirable and necessary in order to make a ship sufficient for her service. The Board of Trade is the great centre of experience in regard to shipping, and it is obviously most important that they should have under their general powers of superintendence—what I think the statute gives them—the power to issue regulations to be observed in the course of surveys, having in view the security of lives and property on board ship. It was explained by the counsel for the Board of Trade—whether the explanation be admitted or not it is sufficient to illustrate what I mean—that the Board from recent occurrences have learned that where cast-iron bends or elbows have been used in connection with the pipes referred to in section 88 of the instructions, they are liable to be broken by any concussion which may affect the hull, and the liquid running from water-closets, soil, and urinal pipes thereby comes into direct contact with the hull of the ship and injures its security. Now, that is an illustration of a matter as to which surveyors at particular ports may very likely be in ignorance, and as to which it seems most desirable that the Board should give them guidance and instructions. There are other rules of the same class which seem to me to be equally important—as, for example, section 22, which deals with combings, skylights, scuppers, ports, and gratings (matters of the greatest importance in a passenger ship), and section 56, which specifies particular requirements in regard to the decks and floors, companions or hatches, and the like. It appears to me it would be most undesirable to leave matters of such importance to the will or fancy of individual surveyors at the various ports of the kingdom without giving them the benefit of the latest experience and the directions of the Board of Trade, whose servants they are. But I do not think that the statute has left matters in that position. On the contrary, I think the statute vests in the Board of Trade the power of directing the surveyors in regard to such matters.

After the best consideration I could give to the case, I should have been disposed to adopt this view irrespective of the recent statute which gives the shipowner a power of appeal; but it is satisfactory to know that if the Board should in their instructions make requirements oppressive and unnecessary and capricious in their nature, there is a power of appeal. The recent amendment of the law in this respect is probably to be accounted for from the circumstance that the Legislature had seen that without some such power of appeal the provision of the previous statutes might possibly produce some hardships against shipowners and shipbuilders; and it is worthy of notice as bearing on the general argument that the questions which may arise are treated as matters between the shipowner and the Board, not between the surveyor (the Board's servant) and the shipowner. It was not maintained by the counsel for the Board of Trade that the instructions were final, so that a Court of Survey could not deal with them, or that the skilled referees appointed under the recent statute could not deal with them. On the contrary, it was conceded that if the instructions were in any respect open to objection there was an appeal under the statute. It appears to me that is a sound view. If the pursuers in this case are right in saying that this is a capricious and fanciful requirement on the part of the Board of Trade, they have the remedy of appealing to the Court of Survey, or under the section of the statute which gives them an alternative course they are entitled to require that skilled referees shall give an opinion upon the matter in dispute, and upon that opinion I should think the Board of Trade would be bound to act.

On these grounds I am of opinion that the contention of the pursuers of this action is not well founded.

The Court adhered.

Counsel for Pursuers (Reclaimers)—Kinnear—Mackintosh. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for Defenders (Respondents)—Solicitor-General (Balfour), Q.C. — Muirhead. Agent—David Turnbull, W.S.

Friday, June 25.

FIRST DIVISION.

[Sheriff of Aberdeenshire.

RENNIE AND OTHERS (DUGUID'S TRUSTEES) *v.* URQUHART.

Bill—Sexennial Prescription—Writ.

Where a letter of a defender is founded on as establishing the subsistence of a debt due under a bill of exchange which is prescribed, it is competent to refer to the letter to which the writ founded on is an answer, even when that letter is not addressed to the defender.—Circumstances in which the subsistence of such a debt *held* to have been proved.

The pursuers in this case were the trustees of the late William Duguid, farmer, Udny, Aberdeenshire, who died on the 29th November 1875, and the defender was Alexander Urquhart, farmer, Lyne of Skene, in the same county. The question related to a bill of exchange for £52, 1s., accepted by the defender along with a Mrs Rae in favour of Duguid. The bill was dated "Ardmore, 1st April 1870," and admittedly fell under the sexennial prescription. The pursuers, however, founded on the following writ of the defender, being a letter by him to W. Giles, one of the pursuers, as establishing that the debt was resting-owing:— "*Lyne of Linton, 13th May* 1878.

"Dear Sir,—Mrs Rae got your letter regarding the Ardmore money. I would ask you for a favour to let it lie with us just now. I am quite willing to pay interest for it, as I know off a farm that will be to let between this and the next term, and I am to get the first offer of it, and I cannot get money for my crop untill the fiars are struck in March. I had a farm taken (the end of a lease), and the factor satisfied with me for tenant. Then the outgoing tenant and the factor quarreled about bad farming, and he must finish his lease himself. That is the reason how I am selling off. It is only the cattle and horses and some of the farming implements that is to be sold. Mis Duguid has been written about it. I trust you

will not ask it at this time, as I have told you the disappointment I got about the farm."

The letter to which the above was an answer was a letter by Giles, not to Urquhart, but to Mrs Rae, the co-obligant in the bill. It was in these terms:— "*Udny Station*, 10*th May* 1878.

"Dear Madam, — Mr Rennie, Allathan, Mr Duguid, Mosshead, and I, as executors on the late Mr Duguid's estate at Ardmore, being very anxious to get finally settled with the Ardmore family, and having seen that the sale at Lyne of Linton is to be on 16th inst., I was requested to write to you to say that we hope you will then be able to pay off the amount due between you and Mr Urquhart to Mr Duguid, so that we may be clear of our executorship. Trusting to hear from you in course of post."

These letters were not set forth in the condescendence, but were recovered subsequently to the closing of the record. The only debt which the defender admitted to be due was one for £3.

The Sheriff-Substitute (Dove Wilson) found that the pursuers had proved the debt by the defender's writ, and therefore decerned against him, adding this note—

"*Note.*—The debt seems to me to be sufficiently proved by the letter of 13th May 1878. That letter is dated after the expiry of the prescriptive period, and therefore will establish the debt, provided that it was written with reference to the bill.

"The question whether it would be competent to connect the letter with the bill by parole evidence would be one of difficulty, but I do not think it necessary to consider that question, as the letter when carefully read must be seen to apply to the bill and to nothing else. It refers, *ex facie*, to a debt due by Mrs Rae and the defender. These are the co-obligants on the bill. The money is spoken of as the 'Ardmore' money, and the letter says that a relative letter had been written about it to Mrs Duguid. Ardmore was where the deceased holder of the bill resided, and Mrs Duguid is his widow.

"Then the debt is spoken of as a considerable sum. The letter proposes to 'let it lie' for a longer period, and to pay interest on it, and the great hardship to the writer of having to pay it up at once is pointed out. The letter applies as plainly as can be to the existence of a considerable debt by way of loan from the deceased Mr Duguid of Ardmore to Mrs Rae and the defender.

"To what can this possibly apply except the bill? The defender's suggestion that it applies to a small balance of £3 is absurd, and nothing else is suggested. Nothing is left but the bill to which it can apply.

"It is said that the letter is not sufficient proof, because it does not refer expressly to the bill, and does not mention any specific sum. It is not, however, necessary that it should. The Prescription Act merely says that the debt is to be proved by writ. In the absence of authority to the contrary, this must mean any writ which is sufficient to bring home a conviction that the debt in the bill is still due. (See *Wood* v. *Howden*, February 7, 1843, 5 D. 507, and Dickson on Evidence, p. 314, section 448.)"

The Sheriff (Guthrie Smith) adhered, adding the following note.—

"*Note.*—It has been laid down that a plea of prescription may be overcome by letters which are not in themselves clear and explicit, but which when read in connection with the correspondence of which they form a part are intelligible. It is accordingly competent not only to refer to the writ of the debtor, but to explain that writ by the letter of his creditor to which it was an answer. (*Fiske* v. *Walpole*, 22 D. 1488.) This appears to the Sheriff to be the answer to the defender's argument—that in the writing founded on the debt claimed is insufficiently identified. No one can read the correspondence without seeing that there never was any question between the parties with respect to any debt but the one now sued for. It is not as if they had had extensive bill transactions. For aught that the defender is able to allege to the contrary, there never was any bill between them but the one produced; and when we find the defender speaking of it as the 'Ardmore money,' pleading his inability to pay it, and craving further time, there can be very little doubt of what he meant.'

The defender appealed, and argued—Assuming that it was competent to refer to the letter to Mrs Rae, which was doubtful—*Blair* v. *Horn*, January 17, 1859, 21 D. 1004—especially as that letter was to Mrs Rae and not to the defender, nevertheless in the present case it was not the irresistible conclusion that the two letters referred to the bill in question. The word "bill" was not once mentioned, which was remarkable if the debt referred to in the letters was contained in a bill, seeing that Mr Giles was a bank agent, and yet he used every phrase but "bill." In *Wood* v. *Howden*, February 7, 1843, 5 D. 507, on the other hand, the amount of interest acknowledged exactly corresponded to the interest due on the bill. Then in that case the writ founded on was set forth in the condescendence; here that was not the case, and consequently the defender was at a disadvantage, having no opportunity of explanation. [Lord President—Then do you want to give another explanation?] No; the *onus* was on the pursuers to show that the writ could not possibly refer to anything but the bill, and they had failed to do so here.

Argued for respondents—It was competent to refer to the letters to which defender's writ was an answer—*Wood* v. *Howden*, *supra*; *Stevenson* v. *Ryle*, May 31, 1849, 11 D. 1086, and Feb. 15, 1850, 12 D. 673; *Cullen* v. *Smeal*, July 12, 1853, 15 D. 868; *M'Gregor* v. *M'Gregor*, June 27, 1860, 22 D. 1264; *Fiske* v. *Walpole*, June 19, 1860, 22 D. 1488. And taking the two letters together, the conclusion was a necessary one, that the debt referred to in the letters was the debt in the bill. The money was called the "Ardmore money;" the co-debtors were the defender and Mrs Urquhart, and no other debt had been suggested which realised these conditions. The only debt which the defender had condescended on was a small one of £3 due by himself only. [Lord President—Yes; but you do not condescend on this letter of his.] The record might competently be opened up, but the *onus* of proving that the debt in the letter referred to another debt was on the defender—Dickson on Evidence, sec. 449.

At advising—

Lord President—The action here is laid on a bill for £52, 1s. which is dated 1st April 1870, and is accepted by the defender and by a person

named Mrs Rae. Oddly enough the drawer of the bill has not signed, but there are notes of the payment of interest on the back of the bill which are signed by the late William Duguid as creditor. The action is met by the plea of the sexennial prescription, and there is not the least doubt that the bill has prescribed. Accordingly the Sheriff-Substitute has sustained the plea of prescription. But the question remains, whether the pursuer has succeeded in showing by the writ of the defender that the debt is resting-owing?

Now, the writ relied on is a letter of the defender dated 13th May 1878, and that letter contains an admission undoubtedly that a debt is due by the defender to the pursuer, but the defender maintains that the letter is quite insufficient to prove that the debt referred to is the debt in the bill. Now, if the letter had stood alone, there might have been some difficulty in construing it to refer to the debt in the bill; but I have no doubt at all that in reading this letter it is competent to take into account the letter to which it is an answer. That is a letter, not to the defender but to Mrs Rae, the co-debtor in the bill. It is from Mr Giles, one of Mr Duguid's executors, who says—"I was requested to write to you to say that we hope you will be able to pay off the amount due between you and Mr Urquhart and Mr Duguid, so that we may be cleared of our executorship." And the answer, not by Mrs Rae, but by the defender, to whom apparently Mrs Rae had handed the letter, is in these terms—"Mrs Rae got your letter regarding the Ardmore money. I would ask you for a favour to let it lie with us just now. I am quite willing to pay interest for it, as I know of a farm to let," and so forth; and he concludes—"I trust you will not ask it at this time, as I have told you the disappointment I got about the farm." Now, taking the two letters together, I think that it is proved that there was a debt due by the defender and Mrs Rae, and that that debt was due to Mr Duguid of Ardmore, and further, that it was in some way concerned with Ardmore farm, or at least with Mr Duguid's affairs there. It was, besides, plainly not a debt of a trifling amount—the tone of Mr Urquhart's letter makes that clear—but one of some importance. Now, the only debt which he admits to be due is one of £3 which cannot possibly be the one referred to in his letter. It therefore appears to me that the debt in the bill is the debt referred to in the letter, because it cannot possibly refer to any other.

Lord Deas, Lord Mure, and Lord Shand concurred.

Appeal refused.

Counsel for Appellant (Defender)—Rhind—J. M. Gibson. Agent—W. Officer, S.S.C.

Counsel for Respondent (Pursuer)—Jameson. Agent—John Bell, W.S.

Friday, June 25.

FIRST DIVISION.

[Lord Lee, Ordinary.

SIR GEORGE MACPHERSON GRANT (MACPHERSON GRANT'S CURATOR BONIS), PETITIONER.

Judicial Factor—Curator Bonis—*Special Powers—Abatement of Rents.*

As a general rule a *curator bonis* will not obtain special powers to grant an abatement of rent at so much per cent. to all the tenants of a large estate indiscriminately in respect of losses during a particular year; but where it was proposed that the sum allowed as an abatement should be expended in the purchase of artificial manures to be applied to the estate, power to grant an abatement which should not exceed 10 per cent. to all the tenants was on that condition granted.

Opinion (*per* Lord Shand) that in the circumstances of the case the application should be granted without imposing any such condition.

This was a note by Sir George Macpherson Grant, Bart., *curator bonis* to Thomas Macpherson Grant of Craigo, praying for special powers to grant abatement of rents to the tenants on the estate of Craigo. The petitioner in his report to the Accountant of Court set forth that "the agricultural tenants on the ward's estates, like other farmers all over the country, have of late years suffered from a succession of bad seasons, foreign importation, and the prevailing general depression of agriculture. The tenants have hitherto, at least up to 1878, paid their rents regularly, but they have sent to the *curator bonis* the following application for an abatement of their rents for crop and year 1878, which were payable at Candlemas and Lammas 1879, viz.:—

"'Montrose, June 1879.

"'To Sir George Macpherson Grant of Ballindalloch, &c., Baronet.

"'We, undersigned tenants on the estate of Craigo and other properties belonging to Thomas Macpherson Grant, Esq. of Craigo, beg to call your attention to the depressed state of agriculture which has existed for several years, and which during the past two years has been excessive, and we respectfully request that you will take our case into consideration, and grant such a reduction of rent as in keeping with what has been done by several of the leading proprietors in this neighbourhood, or as you may deem proper in the circumstances.'—[*Here follow the names of eighteen tenants.*]

"In addition to the tenants who have signed the above application, there are other two who occupy small farms on the ward's properties, and who desire to be included in the application.

"The *curator bonis* on receiving this application made inquiry as to what had been done by the leading proprietors in the county, and he has been informed and believes that the following proprietors have each allowed an abatement of 10 per cent. from the rents of crop and year 1878, viz.:—[*Here follow the names of nine large proprietors in Forfarshire and Kincardineshire.*]