petition the Sheriff that the society should be wound up voluntarily under the supervision of the Court, in terms of the said last-mentioned Act. The Sheriff accordingly pronounced a winding-up order and appointed liquidators.

The Building Societies Act provides, section 32—"A society under this Act may terminate or be dissolved . . . (4) By winding-up either voluntarily or under the supervision of the Court, or by the Court on the petition of any member authorised by three-fourths of the members present at a general meeting of the society specially called for the purpose to present the same on behalf of the society." And by section 4 it is provided—"The Court in this Act means . . . In Scotland the Sheriff's Court of the county in which the chief office or place of meeting for the business of the society is situate."

The Society had in May 1875 advanced to James Maclaren, architect in Dundee, the sum of £2700, repayment of £900 of which was to be made by instalments. Maclaren granted a bond and disposition in security for the remaining £1800, conveying certain subjects in security, and binding himself to make repayment of that sum to the company in their office in Edinburgh—"In the first place, of the foresaid sum of Eighteen hundred pounds, at any time I may be required so to do, within the office of the said company at Edinburgh, on three months' notice being given to me, my heirs or successors, by said company, by letter under the hand of the secretary thereof for the time being, put into the Post Office in Edinburgh, or any receiving-box thereof there, addressed to me or my foresaids, at the address of me or them entered in the books of said company, with a fifth part more of liquidate penalty in case of failure, and the interest of the said principal sum at the rate of five per centum per annum from the date hereof until payment."

By another transaction, in May 1875, the Society advanced to Maclaren £900, £300 of which he agreed to pay by instalments, and in security of the remaining £600 granted an *ex facie* absolute conveyance of certain heritable subjects in Broughty Ferry.

In August 1881 intimation was made to Maclaren by the Society's secretary of their intention to call up the loans, which therefore fell to be paid on 11th November. Maclaren did not pay, but offered to do so on condition that the company and the liquidators should assign the bond and disposition for £1800, and convey the subjects conveyed in security for the other loan to the persons who had agreed to advance the money; this, however, he said they were unable for want of title to do, since the Society was dissolved, and the appointment of the liquidators gave them no such powers as were necessary. The liquidators refused to make any application to any Court for special powers, and raised action for payment of the £2400, pleading the indebtedness of Maclaren, and that "(3) In respect the company exists until the winding-up has been completed, the objection to the pursuers' title to discharge said obligations and to reconvey the subjects is unfounded. (4) In respect of the powers conferred on liquidators in the winding-up of joint-stock companies by the Companies Act 1862, the pursuers are *in titulo* to enforce and discharge the said obligations and to reconvey the said subjects."

The defender answered—"The pursuers not being *in titulo* to discharge or assign the said bond and disposition in security, or to reconvey or convey the subjects vested in the Scottish Property Investment Company Building Society, under *ex facie* absolute disposition by the defender, are not entitled to insist in the present action."

The pursuers quoted *Andrew* v. *Swansea Cambrian Benefit Building Society*, 50 L.J. (C. P. Div.) 428, and maintained that to construe the term "winding-up" in the Building Societies Act recourse must be had to the Companies Act of 1862. By section 133 of that Act liquidators in a voluntary liquidation may exercise all the powers given by the Act to official liquidators, and by section 95 official liquidators have power "to sell the real and personal and heritable and moveable property, effects, and things in action of the company, by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;" and "to do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets."

The Lord Ordinary gave effect to this argument, and pronounced this interlocutor—"The Lord Ordinary having considered the cause, repels the defences: Decerns against the defender in terms of the conclusions of the summons."

Counsel for Pursuers — Strachan. Agents—Davidson & Syme, W.S.

Counsel for Defender—H. Johnston. Agents—Henderson & Clark, W.S.

Thursday, August 17.

BILL CHAMBER.

(Before Lord Shand.)

TURNER *v.* GALWAY.

Arrestment — Jurisdiction — Ship — Sheriff — 1 *Will. IV. c.* 69, *sec.* 21.

Warrant *granted* to bring an arrested vessel into port. *Opinion* that the Sheriff might competently grant such a warrant.

This was an action raised against Mr Galway, corn merchant, Leith, by one of his creditors, for the amount due in respect of certain goods furnished in the ordinary course of trade. Mr Galway had left this country for Germany shortly before the date of application, without making any provision for his debts, and a yacht which belonged to him was lying in Leith Roads. The creditor having obtained a warrant in the Bill Chamber in the ordinary terms, authorising the arrestment of maritime subjects and the dismantling of vessels, on the dependence of his action arrested the yacht without dismantling her; but the captain, in the face of the arrestment, threatened, in obedience to instructions given to him by Mr Galway, to take the yacht to Germany. Thereupon an application was made to the Bill Chamber for a warrant to bring the vessel into port, and thereafter to dismantle her. In making this application the pursuer founded

on the opinion expressed by Lord Shand in the case of *Carlberg* v. *Borjesson*, decided by the First Division of the Court of Session in the year 1877. There the Court held that the usual warrant to arrest and dismantle did not authorise the messenger to bring the vessel back to port after she had sailed. But Lord Shand indicated an opinion that a warrant to bring a vessel into port while she was still within the jurisdiction of the Court, might, on a special statement, be granted by the Judge Ordinary. In the present case, a special statement having been made that the captain was about to obey the instructions of his employer and to sail with the yacht to Germany, in disregard of the arrestment, Lord Shand gave effect to his opinion formerly expressed, and granted a warrant to bring the yacht into port in order that she might there be dismantled. His Lordship held that under the Admiralty Act, 1 William IV. chap. 69, sec. 21, the Lord Ordinary on the Bills has this power in vacation. The section of the Admiralty Act referred to provides that "the High Court of Admiralty be abolished, and that hereafter the Court of Session shall hold and exercise original jurisdiction in all maritime civil causes and proceedings of the same nature and extent in all respects as that held and exercised in regard to such causes by the High Court of Admiralty before the passing of this Act; and all applications of a summary nature connected with such causes may be made to the Lord Ordinary on the Bills."

His Lordship in granting the application stated his opinion that the Sheriff as Judge Ordinary was entitled in similar circumstances to grant such warrants where the defender is on any ground subject to the jurisdiction of the Sheriff.

Agent—Andrew Wallace, Solicitor.

HOUSE OF LORDS.

Wednesday, July 26.

(Before Lord Chancellor Selborne, Lords O'Hagan, Blackburn, Watson, and Bramwell.)

GRAHAME *v.* THE MAGISTRATES OF KIRKCALDY.

(*Ante*, vol. xviii. p. 248, and 8 R. 395.)

Nobile Officium—*Equitable Compensation—Legal Rights—Burgh*—Actio popularis.

A Court of Equity has a discretion in highly exceptional cases to withhold from parties the legal remedy to which they would in ordinary cases be entitled as a matter of course.

An inhabitant of a burgh had obtained interdict against the magistrates to prevent them building on a particular piece of ground dedicated to the public uses of the burgh. While this process was in dependence the magistrates proceeded with the building, and completed it before interdict was granted; the building was for public purposes. The complainer then brought an action for declarator of the public right, and decree against the magistrates to remove the building; the magistrates offered to convey to the community a piece of ground in every way as suitable for public purposes in lieu of that now occupied by buildings. *Held* (*aff.* judgment of the Court of Session) that this offer was a reasonable offer, and that in respect the interest of the pursuer was as one of the community, the Court was entitled to apply the rule stated above, and to refuse the remedy asked in so far as the removal of the building was demanded.

Opinion, that if the pursuer had sued as an individual to enforce his own private right and interest in similar circumstances the Court could not have denied him his full legal remedy.

Interdict—Process—Expenses.

Held (*rev.* judgment of Court of Session) that the pursuer was entitled to decree of declarator and to his expenses in both Courts, in respect the magistrates had gone on to complete the building after the process of interdict had been brought, and had not proposed to recognise the rights of the community except in so far as they might be forced to recognise and make provision for them by the pursuer's action.

Question whether the case of *Begg* v. *Jack*, October 26, 1875, 3 R. 35, was well decided.

This action was decided by the Second Division of the Court of Session on 19th January 1881, and is reported *ante*, vol. xviii. p. 248, and 8 R. 395. The Court assoilzied the magistrates on their lodging in process a conveyance of the ground which they proposed to substitute for the ground claimed by the pursuer as public property, and held to be so in the former process, which was decided on June 19, 1879, and is reported in 16 Scot. Law Rep. 676, and 6 R. 1066.

The pursuer appealed.

At delivering judgment—

Lord Watson—My Lords, had the present action been the only proceeding taken by the appellant in order to vindicate his rights as an inhabitant of the burgh of Kirkcaldy, I should have had little difficulty in coming to the conclusion that, admitting the right of the community to have the whole area of the South Links kept free from buildings, the Court was nevertheless justified in refusing to ordain the stables in question to be taken down.

It appears to me that a Superior Court having equitable jurisdiction must also have a discretion, in certain exceptional cases, to withhold from parties applying for it that remedy to which in ordinary circumstances they would be entitled as a matter of course. In order to justify the exercise of such a discretionary power there must be some very cogent reason for depriving litigants of the ordinary means of enforcing their legal rights. There are, so far as I know, only three decided cases in which the Court of Session—there being no facts sufficient to raise a plea in bar of the action—have nevertheless denied to the pursuer the remedy to which in strict law he was entitled. These authorities seem to establish, if that were necessary, the proposition that the Court has the power of declining upon equitable grounds to enforce an admittedly legal right, but they also show that the power has been very rarely exercised.