But in the absence of anything to the contrary it is just a restoration of things to the condition in which they were. Now, it so happened—and I think it was an accident—and an accident immaterial to anything we have to consider here—that the proprietor of the adjoining estate of Boquhanran had a right to have a tail-race to his mill running through the adjoining lands of Dalmuir—so long as this ground in dispute was part of Dalmuir—and through the adjoining lands of the Canal Company when it was their separate property; but that was just a right—a privilege no doubt, perhaps a servitude—which the estate or mill of Boquhanran had over the adjoining lands of Dalmuir, and it would be the adjoining lands of Dalmuir even while in the hands of the Canal Company, although you might not apply that name to it then. But what has that to do with the property? And if he had acquired it before he had acquired Boquhanran he would just have acquired the property of the piece of ground as he had had it before, and the proprietor of Boquhanran would have his tail-race running through his lands of Dalmuir as before instead of running through the Canal Company's lands during the period when they had possession. That surely would have been all quite clear. Then, suppose he buys Boquhanran some months or some years after, how would that transfer the property of this piece of ground to Boquhanran, or the purchase of Boquhanran to him? I put it to Mr Guthrie, Would not the case be the same if he had sold Boquhanran after he had acquired this? and he said, "Oh! yes; and it would then in respect of the tail-race as a servitude on it have become the property of the proprietor of the dominant tenement who had the right to this tail-race servitude." That is as extravagant an argument as could well be stated on a matter of probable title, but it is the whole argument stateable here.

For these reasons I am of opinion with your Lordship and the Lord Ordinary.

Lord Craighill—I am of the same opinion. In the first place, I think it perfectly clear that by the clause under the excambion of 1832 the estate of Boquhanran was not at that time enlarged. There is nothing in the evidence to show that the ground in question was thrown into Boquhanran, nor is there anything to show that at that time, with reference to what occurred on the part of those acquiring, it was thought that Boquhanran might be enlarged. No doubt it might have been shown, if it was competent to show, that Boquhanran, as that word was used in the settlement, included not merely the original property but the original property *plus* the part in dispute. But there is no proof whatever that the word Boquhanran is used there to express anything but what had been the description of the property before this ground was given off from Dalmuir. With regard to the contention of the pursuer that Dalmuir is to be held to carry not that which was the estate prior to the excambion in 1832, but that estate with the addition of the excambed ground, your Lordship has expressed my views. I also agree with what the Lord Ordinary has said in support of his conclusion.

Lord Rutherfurd Clark concurred.

The Court adhered to the Lord Ordinary's interlocutor.

Counsel for Pursuer (Respondent) — Keir—Mackintosh. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Defenders (Reclaimers)—Robertson—Guthrie. Agents—J. & J. Ross, W.S.

Wednesday, June 6.

FIRST DIVISION.

[Sheriff of Dumfries and Galloway.

BRITISH LINEN CO. BANK *v.* CARRUTHERS (FERGUSSON'S TRUSTEE).

Bank—Cheque for Value—Assignation—Effect of Presentation of Cheque where Funds in Drawer's Account are insufficient to meet it.

A cheque granted for value, when presented at the bank on which it is drawn, constitutes an intimated assignation of the drawer's funds to the amount of the value of the cheque; and if the cheque be for a larger amount than is at the drawer's credit with the bank, it nevertheless operates as an assignation of such funds as are at his credit.

David Fergusson, farmer, Goosehill, Sanquhar, had an account-current with the British Linen Company at their bank at Sanquhar. On the 30th October 1881 he purchased from John Fergusson, Tobermory, a number of sheep, which were duly delivered to him, and in payment for which he on 30th December 1881 granted a cheque for £161. This cheque was drawn on the British Linen Company at their Sanquhar branch, and John Fergusson paid it into his own bank account. It was presented for payment at the British Linen Bank at Sanquhar, through his banker, on 5th January 1882, but payment was refused on the ground of insufficient funds. It was again presented on 25th January 1882, but payment was for the same reason a second time refused. The amount at the credit of David Fergusson at this time was £135, 13s. 10d. It was afterwards increased by him to £156, 8s.

David Fergusson's estates were sequestrated on 22d April 1882, and Joseph Carruthers, solicitor, Sanquhar, who was also agent for the bank, was appointed trustee.

On the 30th June 1882 an action of multiplepoinding was raised in the Sheriff Court at Dumfries in name of the British Linen Company, concluding that the bank should be found liable in once and single payment only of the said sum of £156, 8s. The real raiser of the action was Joseph Carruthers, as trustee on the sequestrated estate of David Fergusson. He claimed the whole fund for behoof of creditors, and pleaded that the cheque for £161 was ineffectual as an assignation of the amount at the credit of the account on which it was drawn, in respect that at the dates of presentation the amount at the credit of the drawer was insufficient

to meet it, and further, that a banker was not bound to make a partial payment on account of a cheque presented to him.

A claim was also put in by John Fergusson, who claimed to be ranked and preferred to the fund *in medio* to the extent of £135, 13s. 10d., the amount discovered to be at David Fergusson's (the bankrupt's) credit at the time when the cheque for £161 was presented for payment. He pleaded that the said cheque having been delivered for value, and duly presented for payment, such presentation operated as an assignation to him of the amount of funds then at David Fergusson's credit in the bank not exceeding the amount of the cheque.

On 19th October 1882 the Sheriff-Substitute pronounced the following interlocutor:—"The Sheriff-Substitute having considered the claims and the whole process, after a debate thereon, Finds in fact (1) that on 30th December 1881 the claimant John Fergusson received from David Fergusson, farmer, Goosehill, Sanquhar, a cheque on the British Linen Company's Bank at Sanquhar, dated the same day, for £161, in payment of some sheep sold and delivered by him to the latter; (2) that said claimant paid said cheque into his account with the Commercial Bank of Scotland, by whom it was presented for payment at said branch of the British Linen Company on 5th January 1882; (3) that payment was refused on the ground of 'insufficient funds,' and was again refused on the same ground when the cheque was presented a second time on 25th January, and that the cheque is still unpaid; (4) that at the dates of the presentations of the said cheque there was at the credit of the said David Fergusson, on his account with the British Linen Company at Sanquhar, the sum of £135, 13s. 10d.; (5) that the estates of the said David Fergusson were sequestrated on 22d April 1882, and the claimant Joseph Carruthers was appointed trustee thereon; (6) that the sum at the credit of the said David Fergusson with the British Linen Company at the date of the raising of this action was £156, 8s., which forms the fund *in medio;* (7) that the said John Fergusson claims to be ranked on the fund to the extent of £135, 13s. 10d., being the amount at the credit of the said David Fergusson when the cheque granted by him was presented for payment, and that the said Joseph Carruthers claims the whole of the fund *in medio* as belonging to David Fergusson's sequestrated estate: Finds in law (1) that the delivery to John Fergusson and presentation by him of the cheque in question did not operate as an assignation of the sum then at the credit of David Fergusson with the bank; and (2) that the bank agent was not bound or entitled to make a partial payment to account of said cheque: Therefore repels the plea-in-law and claim for John Fergusson, sustains the first and third pleas-in-law and the claim for Joseph Carruthers, and ranks and prefers him on the fund *in medio* in terms of his claim, with any interest that has accrued thereon since the raising of the action, and grants warrant to the consignee to pay the same to said claimant: Finds the said John Fergusson liable in expenses; allows an account, &c.

"*Note.*—Judged merely from the practice of banking, this is a simple case. Collins on the 'Law and Practice of Banking' says (page 167)—'A banker is not empowered to make a part 'payment on a cheque. For instance, if A draws a cheque for £50, and his balance at the drawee's is but £30, the drawee is not entitled to pay £30 on account . . . . there is no middle course between compliance and non-compliance. Neither is a banker empowered to disclose to the presenter the balance at the credit of the drawee's account in his hands, thereby to enable the presenter to lodge to the drawer's credit the amount deficient, and so provide sufficient funds to meet the cheque, and so obtain payment. Making a part payment on a cheque, as above, would be a disclosure of the customer's account, and on no occasion or under no circumstances—except as a witness in some of Her Majesty's courts of law or equity—can a banker disclose the state of his customer's account.' Again, Robertson in his 'Handbook of Bankers' Law' (page 56) says—'When a cheque is presented to a banker, and the banker has not sufficient funds to answer the demand, the proper reply to give to the presenter of the cheque is "insufficient funds;" and should the holder of the cheque inquire how much stands at the drawer's credit, with a view to paying in the difference, and so getting payment of the cheque, such payment, it is understood, would be reducible, as being in prejudice of the other creditors of the maker of the cheque. It follows accordingly that in such cases a bank is not bound to pay a cheque in part.'

"The Sheriff-Substitute cannot see how, if the presenter of the cheque has no right to demand part payment, the granting and presentation of the cheque can operate as an assignation in his favour of whatever sum may be at the credit of the granter. Arguments were adduced that at common law a cheque was the same as a bill of exchange, and operated as an assignation. The authorities on this point are conflicting, and some of them are far from clear; but in the case of *Waterston* v. *City of Glasgow Bank* (February 6, 1874, 1 R. 470) the Judges were unanimous in holding that a cheque, even when presented, did not operate as an assignation.

"The curious thing is that in no institutional writer, and in no report of any decision that the Sheriff-Substitute has seen, has the question of a right to partial payment been dealt with. It seems, therefore, to him that the matter must be dealt with, at all events, in a court of first instance, like the Sheriff Court, according to the rules and practice of banking. The Sheriff-Substitute at first had some doubts whether the law was not altered by the Bills of Exchange Act, passed in the last session of Parliament, which by section 73 provides as follows:—'A cheque is a bill of exchange drawn on a banker, payable on demand. Except as otherwise provided in this part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.' And in sub-section (2) of section 53 it is provided that, 'In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee.' But it will be noticed that this provision is limited to the case where

the drawee has 'funds available' for the payment of the bill. It does not say 'or part of the bill;' and seeing that neither statutes nor decisions go contrary to the practice of bankers, the Sheriff-Substitute feels bound to uphold it.

John Fergusson appealed to the Sheriff, who on 9th Nov. 1882 pronounced the following interlocutor:—"The Sheriff having resumed consideration of the appeal against the interlocutor of 19th October 1882, with the argument of parties and whole process, adheres to the findings in fact of said interlocutor: *Quoad ultra* sustains the appeal and recals the said interlocutor; and in lieu thereof finds in law that the delivery to John Fergusson and presentment by him of the cheque in question operated as an assignation of the sum then at the credit of David Fergusson with the bank: Therefore sustains the claim of the said John Fergusson, and repels the claim for Joseph Carruthers, and ranks and prefers the said John Fergusson on the fund *in medio* to the extent of £135, 13s. 10d. in terms of his claim, and grants warrant to the consignee to pay the same to the said claimant: Finds the said Joseph Carruthers, as trustee on the sequestrated estate of the said David Fergusson, liable to the said John Fergusson in expenses, and decerns; allows an account, &c.

"*Note.*—The sole question here is whether a bank cheque granted in payment of a debt, duly presented, operates assignation of the funds of the drawer in the hands of the bank on which it is drawn, as against the drawer and his creditors.

"In this case the bank had funds belonging to the drawer, but not sufficient to pay in full when the cheque was presented, and on that ground they refused to pay. But no question arises with the bank; the fund is still in their hands. The drawer David Fergusson, however, has been sequestrated, and his trustee claims the money at the bankrupt's credit.

"Had the drawer, instead of a cheque, given a bill, and it had been duly intimated (not necessarily protested, which is not necessary except for diligence), it would beyond doubt have assigned the funds at the drawer's credit. Why should not a cheque have the same effect? According to many, a cheque is a bill of exchange; yet those who have said so qualify the statement by expressions which seem to go to this, that it may be a bill if parties so intend it, but that it does not carry about with it as drawn, nor even after endorsation, the same presumptions as to onerosity which arise on bills. But it is indicated that when onerosity is proved then the document has the qualities of a bill.

"Here the onerosity is admitted—so also is the due intimation to the bank; whether in such circumstances a cheque operates assignation seems never to have been judicially determined. But there are *obiter dicta* from which the inference is that it is equivalent to assignation. Reference may be made to *M'Donald* v. *Union Bank*, 1864, 2 Macph. 963; *Watt and Others* v. *Pinkney*, 1853, 16 D. 279; and *Waterston* v. *City of Glasgow Bank*, 1874, 1 R. 470; and specially to the judgment of the Lord Justice-Clerk in the case of *Waterston*, bearing in mind that the question there was a different one, namely, whether on receiving a countermand a banker was entitled to refuse to pay a cheque although he had funds. It was in considering whether a cheque was a bill of exchange that the following observations were made: 'In a question with the drawer and his creditors I do not doubt that the cheque is equivalent to an assignation, but it would not be so without proof of consideration. It would not *ex facie* imply onerosity.' Lord Neaves, too, seems to have thought that all that was required to give the cheque the effect of a bill was to prove that it was in the payee's hands for value.

"An argument was founded on the Bills of Exchange Act 1882, sections 73 and 53, subsection 2; and if it be retrospective or declaratory, which it probably is not, there would be no question as to the cheque being equivalent to a bill of exchange; and, for the reasons above given, the Sheriff holds that in the circumstances which have arisen it is so by the old law.

"If the view taken be correct, there is no necessity to make any remarks on the practice of bankers to decline paying cheques though they have funds of the drawer, if they are not sufficient to meet the cheque."

The trustee appealed to the Court of Session, and argued—When a cheque was presented for a larger sum than was at the credit of the drawer, the bank was not bound to honour the cheque even to the amount held by them. A banker was not bound to disclose the state of his customer's account—See Byles on Bills, p. 22, 13th ed., and Robertson's Handbook of Banker's Law, p. 60. There was a substantial difference between bills of exchange and cheques, for in the former there was always a presumption of onerosity which did not exist in the latter—*Watt* v. *Pinkney*, December 21, 1853, 16 D. 279. A cheque was not an assignation which could be intimated—*Hopkinson* v. *Foster*, L.R., 19 Eq. 74. The criterion of the assignee's right was the validity of the intimation to the bank as completing a transfer. The mere granting of a cheque and the presentment of it could not make a completed assignation. A cheque was a revocable document—*Crockat* v. *Brown*, Elchies' *voce* Assignation, Append. ii. No. 5; *Haldane* v. *Spiers*, March 7, 1872, 10 Macph. 537; *Waterston* v. *City of Glasgow Bank*, February 6, 1874, 1 R. 470; *Bryce* v. *Young's Trustee*, January 20, 1866, 4 Macph, 312; Bill of Exchange Act 1882, secs. 53 and 73.

Argued for respondent — As regarded the question of assignation, there was no difference between a bill of exchange and a cheque even although there was an insufficiency of funds—*M'Leod* v. *Creichton*, 1779, M. 16,469; *Carter* v. *M'Intosh*, March 20, 1862, 24 D. 925. The whole question came to be whether a cheque was an assignation. A cheque and an unaccepted bill were in the same position; if so, this case was ruled by that of *Carter*—see also *Sutherland* v. *Commercial Bank*, February 21, 1882, 20 Scot. Law Rep. 139; *Stewart* v. *Ewing*, 1744, M. 1493. The assignation might be good and effectual although the bank refused to pay—*Falkener* v. *Campbell*, January 22, 1824, 2 S. 535. A cheque according to Scotch law was just a bill, although no summary diligence could be done on it, nor could it be protested—*Hopkins* v. *Ware*, L.R., 4 Ex. 268; Bell's Comm. ii., pp. 18 and 19. The cheque here was an irrevocable order for money, because it was for value. It appropriated the money in the drawee's hand for the benefit of the drawer. The question was really one between the granter and the grantee, and not with the banker at all. On the analogy of arrestments—An arrestmen

for £200 would competently attach £50, and why should not a cheque operate by assignation in the same way?

At advising—

Lord President—The fund *in medio* in this multiplepoinding is a sum of £156, 8s. which is in the hands of the British Linen Company as a deposit made by the bankrupt David Fergusson, and which was in the hands of the bank at the date of the raising of this action.

The competing claimants are, in the first place, the trustee on David Fergusson's sequestrated estate, and in the second place, John Fergusson, a creditor of the bankrupt, whose claim is founded upon facts about which fortunately there is no dispute. He had sold some sheep to the bankrupt in December 1881, and had received in payment therefor a cheque to the amount of £161 on the British Linen Company's branch at Sanquhar. Now, this cheque he gave to his own bankers, and they presented it for payment on the 5th January 1882. Payment was then refused on the ground that the bank had not sufficient funds at David Fergusson's credit to meet it. It was presented a second time on the 25th of the same month, and again payment was refused on the same ground, and since then the cheque has remained unpaid. Now, at the time of presentation there was in the hands of the bank a sum of £135, 13s. 10d. belonging to the bankrupt. The estate not having been sequestrated till 22d April 1882, there is of course no question in this case as to the effect of the bankruptcy. The bankrupt was solvent at the time of the presentation of the cheque, and had a credit balance of over £135 at his account. Now, the claimant John Fergusson contends that this cheque and its presentation are equivalent to an intimated assignation of the funds belonging to the bankrupt then in the hands of the bank, and that although the cheque was granted for a larger sum than those funds the funds were transferred to him in part satisfaction of the debt.

This is a question of some importance, and in one respect of some nicety, but it depends for its answer on principles of law which I consider are very well settled. There is no doubt that a bill of exchange of which acceptance is refused, and on which protest for non-acceptance follows, is equivalent to an intimated assignation, and though a cheque on a bank is not in all respects the same as a bill of exchange, yet in certain circumstances it must operate to the same effect. A bill of exchange has this peculiar privilege, however, that value is presumed—a presumption which certainly does not belong to cheques, for a cheque is not always drawn for the purpose of operating payment. It may be drawn for various purposes, as, for instance, it may be given to the holder for the purpose of enabling him to draw the money and hand it to the drawer. Nothing is commoner than that; therefore there cannot be said to be any presumption of value in the case of a cheque. But if value is proved—if the cheque was granted for onerous causes as here—then it comes to be in much the same position as a bill of exchange. Then when it is presented there is no reason that I can see why it should not act as an assignation, and the presentation act as intimation. A cheque is nothing more than a mandate to the mandatory to go to the bank and get the money. The mandate may not be granted for onerous causes, and the mandatory is then merely the hand of the mandant, and does for him what he might have done for himself. But when a cheque is granted for value the case is very different. It is a bare procuratory (to use the language of the older law) when it is granted gratuitously, but when it is granted for value it is a procuratory *in rem suam*, which is just one of the definitions of an assignation. Therefore I cannot doubt that this cheque being granted for onerous causes was an assignation, and if that is so, undoubtedly the demand for payment was a good intimation of it.

But the chief peculiarity in this case arises from the fact that the bank was not in possession of sufficient funds to answer the demand in full—in other words, the sum in the cheque was greater than the balance at the credit of the drawer in the hands of the bank. The cheque could not therefore act as an assignation to its full extent; but did it not operate as an assignation of all the funds in the hands of the bank? That is the question upon which the case depends. I have come to the conclusion that it did operate as an assignation of such funds as were in the hands of the bank, and I have done so upon this consideration chiefly. If this had been an assignation in the ordinary form, an assignation to the creditor for value of the fund in the banker's hand, and the fund had therein been described as larger than it actually was, can it be said that that would not have acted as an effectual transfer of the fund such as it was? I think it would undoubtedly do so. If that be so, and if I am right in what I have said so far, that this cheque is not only equivalent to but the same as an assignation, and operates the same effect, then I do not think the mere form can alter that effect. I do not think it matters whether the words "assign, transfer, and make over" are used if something precisely similar is done by a cheque in ordinary form. When an assignation is made in the ordinary manner, the circumstance that the fund which it professes to transfer is larger than the sum which actually exists in the hands of the debtor does not affect the validity of the transfer of such sums as do exist. On these grounds I agree with the Sheriff in the decision at which he has arrived, and think his interlocutor should be affirmed.

Lord Deas—I am of opinion that the cheque in the present case being for value, and being intimated to the bank by being presented for payment, thereby operated as an assignation of the funds in the bank belonging to the drawer, although these were less in amount than the sum contained in the cheque. I therefore agree with your Lordship in thinking that the interlocutor of the Sheriff should be affirmed.

Lord Mure concurred.

Lord Shand—Laying out of view the particular circumstances in this case, that this cheque was granted for a sum a little larger than the banker on whom it was drawn was bound to honour, I think that there could have been no doubt as to the law if this cheque had been granted after the date of the recent Bills of Exchange Act 1882. By sec. 73 of that statute a cheque is thus described:—"A cheque is a bill of exchange

drawn on a banker payable on demand. Except as otherwise provided in this Act, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque." Again in section 53, while carefully providing that bills of exchange including cheques shall not operate as assignations in England, the Legislature equally carefully provided that "In Scotland when the drawer of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn, in favour of the holder, from the time when the bill is presented to the drawee." The result of these sections is, 1st, that a cheque is on the same footing as a bill of exchange; and 2d, that the statute enacts the common law of Scotland, that a cheque or a bill of exchange when intimated is an assignation. It appears to me that the statute only carries out what it is understood was intended—a consolidation of the existing Scotch law. There is nothing new in it. I agree that a cheque granted for onerous causes to a third party is, on being intimated, equivalent to an assignation. That being so, the only question remaining in the case is, whether because the bank was in debt to the granter to a less amount than that contained in the cheque, the assignation is useless? If this had been an ordinary assignation of a fund and not a cheque, that circumstance would not have prevented the intimated assignation from carrying the fund, and I cannot see that the circumstance that this is in form a cheque can make any difference. The result of the presentation of the cheque was to give a right to the funds of the drawer which the banker had in his hands at the time. On these grounds I concur.

The Court pronounced the following interlocutor:—

"Refuse the appeal and affirm the interlocutor of the Sheriff with this variation, that the words 'as trustee on the sequestrated estate of the said David Fergusson' are omitted in the finding of expenses: Find the appellant liable in expenses in this Court."

Counsel for Appellant — J. P. B. Robertson — Watt. Agents—J. C. & A. Steuart, W.S.

Counsel for Respondent — Trayner — Rhind. Agent—Knight Watson, Solicitor.

Wednesday, June 6.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

THE CLYDE NAVIGATION TRUSTEES *v.* LORD BLANTYRE.

(March 1, 1867, 5 Macph. 508; *aff.* March 3, 1871, 9 Macph. (H. of L.) 6; June 19, 1879, 6 R. (H. of L.) 72; March 5, 1880, 7 R. 659; *aff.* March 7, 1881, 8 R. (H. of L.) 47).

Navigable River—Clyde Navigation Consolidation Act 1858 (21 *and* 22 *Vict. c. cxlix.*), *secs.* 44 *and* 76*—Damage done to Riparian Proprietor by Operations of the Trustees—Right to Compensation—Interdict.*

A riparian proprietor served upon the Clyde Navigation Trustees a notice of claim for compensation in respect of his lands having been injuriously affected by their operations. The Trustees sought to have him interdicted from taking any further procedure on the claim on the ground (1) that as there was no express provision to that effect in the Act of 1858, which repealed all the previous Clyde Navigation Acts, no compensation was due in respect of damage done after that date, and (2) that procedure under the Lands Clauses Act was incompetent. The Court *refused interdict, holding* (1) that as by section 76 power given by the previous Acts to perform certain operations was continued to the Trustees, right to compensation in respect of damage caused by those operations was also continued; and (2) that the provisions of the Lands Clauses Act were by incorporation made available as machinery for working out that right.

Opinions (per Lords Kinnear and Shand) that the same result followed from the incorporation in the Clyde Navigation Act of the Harbours, Docks, and Piers Clauses Act 1847 (10 and 11 Vict. c. 27).

By decree of the House of Lords, pronounced in 1871, affirming the decisions of the Court of Session in a process of suspension and interdict at the instance of Lord Blantyre, and also in a process of declarator, it was determined that Lord Blantyre was not entitled to interdict the Clyde Navigation Trustees from conducting operations for deepening the river within the limits prescribed by the Act of Parliament, by dredging or otherwise, and carrying out to sea the soil taken from the river. By a subsequent decree of the House of Lords, pronounced in 1879, affirming the decision of the Court of Session in another action of declarator at the instance of Lord Blantyre and the Master of Blantyre, it was declared that they were "proprietors of the foreshores of the river Clyde *ex adverso* of the" lands belonging to them on both banks of the river Clyde, "but subject always to any rights of navigation, or any rights which the public may have over the same, and subject also to any rights conferred upon the Trustees of the Clyde Navigation by their Act of Parliament." Thereafter in a process of suspension and interdict brought by Lord Blantyre and the Master of Blantyre against the Clyde Trustees to have them interdicted from removing soil, ground, or other matter from a part of the bed of the river opposite the barony of Erskine, being part of the foreshore which had been declared to be their property in the previous action, the House of Lords, by a judgment pronounced in 1881 (affirming the decision of the Court of Session), refused the interdict craved.

On 11th May 1882 Lord Blantyre caused to be served upon the Trustees of the Clyde Navigation a claim in the following terms:—"... The Trustees of the Clyde Navigation, incorporated by the Clyde Navigation Consolidation Act 1858, and their predecessors the Clyde Trustees, have, under and in virtue of their various Acts of Parliament, conducted and carried on extensive operations by the erection of jetties or transverse dykes extending out from the banks