The Court pronounced this interlocutor:—

"Find that the petitioner is entitled under the 4th section of the Entail Amendment Act 1848 to charge the entailed estate with debt as proposed without any consents, and remit to the Lord Ordinary to proceed in accordance with the above finding."

Counsel for Petitioner—Pearson—Kermack. Agents—Mackenzie & Kermack, W.S.

Saturday, July 18.*

FIRST DIVISION.

[Lord Curriehill, Ordinary.

WALKER, HENDERSON, & COMPANY *v.* J. & P. HUTCHISON.

Ship—Contract to Build Ship—Damages for Deficient Carrying Capacity—Mode of Estimating Damage.

Where a shipbuilder has undertaken to build a vessel of a certain carrying capacity, and the vessel is found on delivery not to be of the stipulated capacity—*held* that the damage to the purchaser ought to be estimated by deducting from the total price a sum proportional to the difference between the actual and the stipulated capacity.

This was an action by the builders of a vessel to recover from the purchasers a sum alleged to be still due for the cost of the vessel. The total price was to be £12,550. The defenders made counter claims of damage, and it was proved to have been agreed by the parties in the course of their correspondence that the vessel should be retained by the defenders, subject to all claims of damage for breach of contract. It was also agreed that these claims should be pleadable, if well founded, by way of compensation. The carrying capacity of the vessel, according to the contract, was to be 470 tons (including 70 tons in bunkers), and the defenders maintained that there was a deficiency in carrying capacity It was proved that there was such deficiency, and that it amounted to 25 tons. There was a dispute as to the manner in which damages thereby arising should be estimated, it being maintained (1) that the proper mode of assessing it was by estimating that the ship would earn less than if she had been of the proper capacity by the number of tons she was short, and then multiplying that deficiency by the number of years which the vessel might be expected to last; or (2) by the method adopted by the Lord Ordinary in the following passage of his note:—"Various modes of calculating the damage are suggested by the defenders' witnesses, but that which most commends itself to my mind is to deduct from the total price a sum proportional to the difference between the actual and stipulated weight-carrying capacity of the vessel [470 : 25 : : £12,550 : the damage to be ascertained] which gives as the result the sum of £667, 15s., which I propose to allow under this head."

His Lordship accordingly gave effect in the interlocutor to the view thus stated.

The pursuers reclaimed, and the First Division adhered.

Agents for Pursuers — Ronald & Ritchie, S.S.C.

Agents for Defender—J. & J. Ross, W.S.

*Decided 19th July 1878.

Tuesday, July 14.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

THE GLASGOW CITY AND DISTRICT RAILWAY COMPANY *v.* THE GLASGOW COAL EXCHANGE COMPANY (LIMITED).

(*Ante*, vol. xx. p. 855).

Reparation—Interdict—Unjustifiable Application for Interdict—Application periculo petentis.

A railway company who had power by their Special Act, subject to liability to make compensation, to "appropriate and use" the subsoil under a street, were delayed in their operations and suffered damage in consequence of an interim interdict obtained by a proprietor in the street, on the ground that the company were bound before proceeding with their operations to "purchase and take" the subsoil in question. This interdict having been recalled as erroneous in law—*held* that a sum of money only having been exigible in any event, the interdict was wrongous, and the proprietor was liable in damages to the company for the consequences of it.

This was an action by the Glasgow City and District Railway Company for £5000 as damages against the Glasgow Coal Exchange Company, Limited. The action arose out of the proceedings for interdict at the instance of the defenders the Coal Exchange Company, against the pursuers the railway company, which are fully reported *ante*, July 20, 1883, 20 Scot. Law Rep. 855, and 10 R. 1283. As there reported, the defenders, as proprietors of property bounded on the north by the centre of W. Regent Street of Glasgow, beneath which street the company's railway was to pass, and which the company had, in the alleged exercise of a power conferred by sections 34 and 55 of their Act (Glasgow City and District Railway Act 1882), opened up and excavated to a considerable depth, and the subsoil of which they had interfered with, had petitioned in the Sheriff Court for, and obtained from the Sheriff-Substitute interim interdict against the operations of the company. That interdict was subsequently recalled by the Sheriff, to whose judgment the Court adhered on appeal. The pursuers averred that the petition for interdict was unjustifiable and improper, that defenders were well aware, and had been warned, of the loss which would be caused by interim interdict being granted, but had insisted on moving for interim interdict on the petition instead of waiting for a record to be made up, that the result had been a stoppage under the interdict