the deed, and from that intention may gather what the deed proposed to do. I do not think that is a mode of construing a feu-charter to which we are accustomed. There is nothing in favour of such a mode of construing a charter; on the contrary, the rule is in favour of liberty to the vassal. All clauses of prohibition must be strictly construed. As to the footpath, I do not here either find any clause of prohibition on which the appellant may rely. It may be that there is a necessity for the respondent to lay down a footpath in front of tenements if he ever builds them, such as are conditioned in the deed, but until he does that I do not think he need to lay down any footpath.

In conclusion, I desire to say that I think the note of the Assessor is not only well put, but is good law.

The Court adhered.

Counsel for Magistrates—Comrie Thomson—Darling. Agents—Millar, Robson, & Innes, S.S.C.

Counsel for Petitioner — Pearson — Low. Agent—Donald Mackenzie, W.S.

Saturday, March 19.

FIRST DIVISION.

[Lord M'Laren, Ordinary.

STEEDMAN *v.* STEEDMAN.

Process—Act 48 *Geo. III. cap.* 151, *sec.* 16—*Reponing—Expenses—Husband and Wife.*

The 16th section of the Act 48 Geo. III. cap. 151, provides that "If the reclaiming or representing days against an interlocutor of a Lord Ordinary shall from mistake or inadvertency have expired, it shall be competent, with the leave of the Lord Ordinary, to submit the said interlocutor by petition to the review of the Division to which the said Lord Ordinary belongs; but declaring always, that in the event of such petition being presented, the petitioners shall be subjected in payment of the expenses previously incurred in the process by the other party." Where a husband had obtained decree of divorce against his wife, and she had from mistake allowed the reclaiming days to expire, she was reponed without payment of expenses, the Lord President *observing*, that while undoubtedly in the ordinary case a person must before being reponed pay his previous expenses, that rule did not apply to the case of husband and wife. If it did, the wife would have been entitled to demand that her husband should furnish her with the means.

Authority cited — *M'Ra* v. *Birtwhistle's Trustees*, March 11, 1831, 9 S. 582.

Counsel for Defender (Reclaimer) — Hay. Agent—James Skinner, S.S.C.

Counsel for Pursuer (Respondent)—Dickson—Forsyth. Agent—N. B. Constable, W.S.

Saturday, March 19.

FIRST DIVISION.

[Lord Fraser, Ordinary.

BLACK *v.* JEHANGEER FRAMJEE & COMPANY.

Expenses—Arrestment on the Dependence—Ship.

Held that the expense of arresting a ship on the dependence and dismantling her under a warrant of the Lord Ordinary on the Bills was not a part of the ordinary expenses of process to be allowed against a defender, and was rightly disallowed by the Auditor.

Thomas Black, sailmaker and ship-store merchant, Greenock, made furnishings to the owners of the ship "Huron" in the year 1886 to the value of £190, 2s. 10d. On 8th September 1886 he used arrestments to found jurisdiction by arresting the "Huron" in Lamlash Bay, where she was then lying. On the same day he raised an action against Thomas Bryson, the master of the ship, for payment of the account, and the owners, Jehangeer Framjee & Company, East India merchants, London, having sisted themselves as defenders, defended the action. Arrestments were used by the pursuer on the dependence.

As the vessel was lying in Lamlash Bay, and was ready for sea, the pursuer applied to the Lord Ordinary on the Bills for warrant to remove her to a safe harbour and dismantle her, and the Lord Ordinary on 9th September granted warrant to remove her to Greenock and dismantle her. This warrant was carried into execution at a considerable expense.

On 8th October 1886 the owners applied for loosing of the arrestments on the dependence.

The Lord Ordinary on the Bills loosed the arrestments on condition of the defenders consigning £400 to meet the pursuer's claims. This £400 was not consigned. Instead of making the consignation the owners, Jehangeer Framjee & Company, endeavoured to get the vessel released by means of an extrajudicial tender. They applied to the pursuer Black for his account of expenses, and the parties agreed to have this account taxed by the Auditor of the Court, which was done on the 12th of October 1886. The amount of the account was £199, 11s. 9d., but the Auditor taxed it at the sum of £21, 7s. 7½d. The sum which was disallowed, and for which the Auditor expressly reserved the claim of the pursuer, was composed of items of expense attending the arrestments, removal of the vessel to a safe port, and there dismantling her. The Auditor in the taxation of the account held that these were not expenses of process, and therefore must be recovered in some other way.

On the 15th October 1886 the defenders tendered payment of the sum concluded for, viz., £190, 2s. 10d. with interest thereon, and the taxed expenses, £21, 7s. 8d. This tender was declined. Thereafter they again applied to the Lord Ordinary on the Bills to discharge the arrestments on the dependence on consignation of the said sums of £190 and £21, but the Lord Ordinary on the Bills refused to make any further order.

The case was argued in the Court of Session

before the Lord Ordinary (FRASER), and on 14th January 1887 he decerned against the defenders in terms of the conclusions of the summons, and found the pursuer entitled to expenses.

The defenders reclaimed, and argued that the action should be dismissed as tender had been made of the sum sued for and expenses before the action came into Court. The pursuer was not entitled to the expenses of arrestment and dismantling. The diligence was used by him for his own security, and the expenses of it could form no part of the expenses of the present process—*Symington* v. *Symington*, June 11, 1874, 1 R. 1006; *Taylor* v. *Taylor*, January 25, 1820, F.C.; *M'Dowall* v. *Stewart*, December 1, 1871, 10 Macph. 193. No doubt in Admiralty actions there was a distinction between actions *in rem* and *in personam*—*Harmer* v. *Bell*, 7 Mor. P.C.R. 267; Smith on Maritime Practice, 31, 24. Here the action was *in personam*. It was a claim for stores furnished, not for seamen's wages, or on a bond of bottomry, or for anything connected with the ship itself—Smith, *ib.* 47; 2 Bell's Comm. 98. It was said that the warrant was part of every Admiralty summons. That only went to show that the Admiralty Court was in advance of the other Courts—*Clark* v. *Loos*, June 17, 1863, 15 D. 750; for until 1 and 2 Vict. cap. 114, sec. 16, a separate warrant was necessary in ordinary summonses.

Argued for the pursuer — That the expenses of arrestment and dismantling formed part of the expenses of the process. In *Symington* and *Taylor*, *supra*, the actions were ordinary actions. But the arresting of a ship forms part of the Admiralty practice. Now this action was truly an action *in rem*. The warrant of arrestment formed an integral part of the old Admiralty summons. It was then all one process, and the expenses attached *rei*—*i.e.*, to the ship. In England the marshall's fees—the marshal being the English counterpart of the Scottish messenger-at-arms—were included in the regular bill of costs—Williams and Bruce on Admiralty Practice, 236, 248, 832. Moreover, the expenses incurred were necessary; for the precept bore that the ship is to be brought to a safe anchorage. Had he not done so the master would have been liable in an action of damages —*Kennedy* v. *M'Kinnon and M'Leod*, December 13, 1821, 1 S. 198 (N.E.); *Paterson* v. *M'Lean and Hope and Hertz*, January 14, 1868, 6 Macph. 218.

At advising—

LORD PRESIDENT—This action is at the instance of Thomas Black, ship-chandler, Greenock, and it is defended by the owners of the ship "Huron." The account sued for is an account for ship-chandling goods, sails, and provisions, furnished while his ship was lying at Ardrossan. She is a foreign ship, and the owners are foreign owners. On the dependence of that action the ship was arrested, and afterwards dismantled, and the question is whether the expenses of arrestment and dismantling can be recovered as part of the expenses of process. The Lord Ordinary has found the pursuer entitled to expenses, but obviously he did not intend these to cover the expenses of arrestment and dismantling. Now, in the ordinary case it is fixed that the expenses of arrestment on the dependence cannot be recovered as part of the expenses of the process upon which the arrestment had been used. That had been settled by two cases, of which the last is the case of *Symington* v. *Symington*, June 11, 1874, 1 R. 1005. The rule there laid down is rested on the principle that "the using of diligence on the dependence, however necessary it may be to make a pursuer's decree effectual when obtained, has nothing to do with obtaining that decree, which is the sole object of the action." Now, the way in which the pursuer endeavours to obviate the application of that rule is by saying that in maritime causes the rule is different. But he has not been able to find an opposite rule laid down, nor has he undertaken to show an existing practice the other way. In these circumstances it seems to me that we must follow the ordinary rule.

LORDS MURE, SHAND, and ADAM concurred.

The Court altered the Lord Ordinary's interlocutor as regarded the finding of expenses accordingly.

Counsel for Defenders (Reclaimeers)—Rhind—Orr. Agent—William Officer, S.S.C.

Counsel for Pursuer (Respondent)—Jameson—M'Kechnie. Agent—William B. Glen, S.S.C.

Saturday, October 30, 1886.

OUTER HOUSE.

[Lord M'Laren.

MACINDOE'S TRUSTEES AND OTHERS *v.* POLLOCK.

Superior and Vassal—Co-Feuars—Charter of Confirmation—Feu-Duty—Relief.

Two co-feuars held of a mid-superior whose mid-superiority was valueless, and who had not made up a title. One of these co-feuars had for a series of years made payment of the whole feu-duty applicable to his own and his co-feuars' lands in order to avoid real diligence at the hands of the over-superior. *Held* that his remedy was not against the mid-superior, and that he was entitled to relief against his co-feuar for payments made in respect of his lands.

This was an action for payment of £53, 18s. 7d. raised by the trustees of the late George Park Macindoe of Boquhanran against John James Pollock of Auchengrie. The pursuers and the defender respectively held the lands of Boquhanran and Auchengrie of Mr Monteith of Carstairs, as immediate lawful superior. The superiority was originally constituted by a feu-disposition by Sir Archibald Edmonstone of Duntreath in favour of his son Charles (afterwards Sir Charles) Edmonstone dated 17th May 1806. The feu-duty thereby stipulated to be paid was illusory. The *dominium utile* of Boquhanran was vested for some time prior to 1825 in the said Sir Charles Edmonstone. On his death it passed by various transmissions into the hands of the pursuers, Macindoe's trustees. The lands of Boquhanran and Auchengrie were held by Mr Monteith subject to the payment to Lord Blantyre as over-superior of the money and victual specified in a precept of *clare constat* granted