James Bennett, Elgin, brought an action in the Sheriff Court at Banff under the Debts Recovery (Scotland) Act, 1867, against George Wilson, farmer, Marypark, for payment of £26, 11s. 3d.

On 1st February 1888 the Sheriff-Substitute (GRIERSON) pronounced an interlocutor in these terms:—"Sustains the defence to the extent of £26, and decerns against the defender for the balance of 11s. 3d. sterling: Finds the defender entitled to expenses, and fixes the same at the sum of sterling, for which decerns at the defender's instance against the pursuer."

Against this judgment the pursuer appealed to the Sheriff (GUTHRIE SMITH), who on 9th May 1888 pronounced an interlocutor in these terms:—". . . Repels the defences, and remits to the Sheriff-Substitute to decern in terms of the summons, with expenses, and decerns."

The defender appealed to the Court of Session.

The respondent (pursuer) objected to the competency of the appeal, and founded on section 10 of the Debts Recovery (Scotland) Act, 1867, which provides that it shall not in any case be "competent to appeal until judgment has been pronounced by the sheriff finally disposing of the cause." Here the Sheriff had remitted to the Sheriff-Substitute to decern in terms of the summons, so the interlocutor appealed against was not final. As the judgment at present stood it could not be extracted. In order to have made the judgment extractable the Sheriff ought not to have remitted to the Sheriff-Substitute, but should himself have decerned in terms of the conclusions of the summons, and the judgment would then have been extractable in accordance with the following provisions:—

The Debts Recovery Act, 1867, sec. 11, provides—" . . . The judgment of the sheriff shall, at the expiry of the period allowed for appeal hereinafter mentioned, and if not appealed from during the same, be extracted as nearly as may be in the same mode, and have the same force and effect, and be followed by the like execution and diligence, as a decree obtained under the 13th section of the first recited Act and relative schedule."

The said first recited Act is the Small Debt Act of 1837 (1 Vict. cap. 41), sec. 13 of which provides—"The decree stating the amount of the expenses (if any) found due to any party . . . . and containing warrant for arrestment, and for poinding and imprisonment, when competent, shall be annexed to the summons and complaint, and on the same paper with it, agreeably to the form in Schedule A annexed to this Act, or to the like effect."

Argued for the appellant—As matter of fact the Sheriff had really disposed of the whole merits of the cause. The defences were repelled, and expenses were dealt with. Therefore the objection taken to the competency of the appeal could not be sustained. [LORD PRESIDENT—But there is no decree for payment, which is what is wanted.] The interlocutor, however, of the Sheriff could easily be worked out; the whole defences being disposed of, all that remained in the interlocutor was merely executorial—*Cathcart* v. *Sloss*, Feb. 11, 1865, 3 Macph. 521; *Malcolm* v. *M'Intyre*, October 19, 1887, 5 R. 22.

The Court, after hearing parties in regard to the competency of the appeal, intimated that they desired to hear the case argued on the merits. After the case had been argued on the merits judgment was pronounced.

At advising—

LORD PRESIDENT—[*After stating his opinion that the Sheriff's judgment was wrong on the merits*]—There is another reason why I think this interlocutor of the Sheriff ought to be recalled, and that is that I do not think it was competently pronounced under the statute. As I read the provisions of the Debts Recovery Act to which we have been referred, I do not think the Sheriff was entitled to remit to the Sheriff-Substitute, but that he ought to have himself pronounced judgment in the cause.

LORD SHAND and LORD ADAM concurred.

LORD MURE was absent.

The Court recalled the interlocutor appealed against, and remitted to the Sheriff to affirm the interlocutor of the Sheriff-Substitute.

Counsel for the Pursuer and Respondent—H. Johnston. Agents—Henderson & Clark, W.S.

Counsel for the Defender and Appellant—D.-F. Mackintosh—Watt. Agent—Alexander Morison, S.S.C.

Thursday, June 14.

FIRST DIVISION.

[Lord Fraser, Ordinary.

LAWSON *v.* GRANGEMOUTH DOCKYARD COMPANY.

Ship—Salvage or Towage.

In an action raised by the owner of a tug for payment of £500 as salvage in respect of services rendered to a steamship which had grounded on a bank in the channel of an inland river, it was proved that the service performed by the tug was one of risk, involving danger to herself, her crew, and her appliances; and that her owner had suffered loss in consequence of these services having been rendered. On the other hand, it was not proved that the steamer had been rescued from a position of danger.

Held that the owner of the tug was entitled to a higher rate of compensation than that paid for ordinary towage services, and £50 awarded.

Expenses—Merchant Shipping Act, 1854 (17 *and* 18 *Vict. cap.* 104), *sec.* 460.

By the 460th section of the Merchant Shipping Act, 1854, it is provided that in actions to compel the payment of salvage brought in the Court of Session, "if the claimants do not recover a greater sum than £200, they shall not, unless the Court certifies that the case is a fit one to be tried in a superior court, recover any . . . expenses incurred by them in prosecution of their claim."

Observed that where the Lord Ordinary

has thought fit to grant such certificate the Court will be slow to interfere with his discretion.

On the 20th of October 1887 the steamer "Tabasqueno," as she was returning from her trial trip, went aground upon the breakwater at the mouth of the river Carron. A small tug, the "Tweed," went to her assistance, but failed to get her off. Signals of distress were made to a large tug, the "Cruiser," which was seen passing the mouth of the Carron with a vessel in tow. In response to these signals the "Cruiser" at once cast off the vessel which she had in tow, and came to the assistance of the "Tabasqueno." On coming up she passed her hawser aboard of the steamer, and succeeded with considerable difficulty in hauling her off the breakwater. For the services thus rendered by his vessel, Joseph Lawson, the owner of the tug, sued the owners of the steamer, the Grangemouth Dockyard Company, for £500.

In the proof led it was established (1) that the services performed by the tug involved danger to herself, her appliances, and her crew; (2) that in loosing from the "Tabasqueno" the "Cruiser's" hawser, of the value of about £24, got entangled in one of the paddles and was destroyed; (3) that the pursuer lost the hire, £3, of the vessel which the "Cruiser" had in tow, and which it cast off in order to go to the assistance of the "Tabasqueno." On the other hand, the pursuer failed to establish that the "Tabasqueno" was rescued from a position of danger.

The defenders tendered £20.

The Lord Ordinary (FRASER) on 1st February 1888 granted decree for £50 with expenses.

The defenders reclaimed, and argued—The pursuer was only entitled to payment at towage rates for the services rendered. With regard to expenses the certificate of the Lord Ordinary should be recalled, as the case could well have been tried before the Sheriff under sec. 49 of the Merchant Shipping Act Amendment Act, 1862 (25 and 26 Vict. cap 63).

The pursuer argued that he was entitled to the sum awarded by the Lord Ordinary, and that the case was a fitting one to be tried in the superior court.

The Court were of opinion that £50 was not more than sufficient remuneration for the services rendered, which, if towage services, were towage services of an extraordinary kind, involving difficulty and danger to the vessel and crew which rendered them. On the question of expenses the Court declined to recal the certificate which the Lord Ordinary had granted in the exercise of his discretion.

The Court adhered.

Counsel for the Pursuer and Respondent—Dickson—Wilson. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Counsel for the Defenders and Reclaimers—Balfour, Q.C.—Ure. Agents—Webster, Will, & Ritchie, S.S.C.

Tuesday, June 19.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

GOURLAY (MARSHALLS' TRUSTEE) *v.* MACNEILL & COMPANY.

Personal or Real—Ground-Annual—Real Burden—Obligation to Build—Personal Action.

A and B, vassals under two feu-contracts, conveyed part of the subjects possessed by them by a contract of ground-annual to C, which contained a declaration that the lands were disponed with and under the real burdens, conditions, obligations, and others contained in the two feu-contracts; and further, with and under an obligation to erect and maintain certain buildings of a specified value. These obligations C bound himself and his heirs, executors, and representatives whomsoever, and his assignees, to perform, and they were declared to be real burdens, and appointed to be recorded in the register of sasines. C subsequently disponed the same subjects to D, and D to E, the disposition in each case being always with and under the real burdens, conditions, and others contained in the feu-contracts and in the contract of ground-annual.

In an action raised by the trustee on the sequestrated estates of A and B against E, to compel him to fulfil the obligations contained in the two feu-contracts and in the contract of ground-annual to erect and maintain certain buildings—*held* (1) that the pursuer had no title to enforce the obligations contained in the two feu-contracts, as he was not a party to them; and (2) that there was no personal obligation upon E, a singular successor in the lands, to fulfil the obligation to build contained in the contract of ground-annual.

Right in Security—Absolute Disposition—Back Bond—Re-conveyance.

An action having been raised against a creditor infeft in certain lands on an *ex facie* absolute disposition qualified by a back bond, to compel him to fulfil certain obligations alleged to be incumbent on him under his title, he recorded the back bond, re-conveyed the lands, and obtained a decree in absence ordaining his debtor to accept and record it.

Opinion reserved as to the effect of such re-conveyance subsequent to the raising of an action.

This action was raised on the 29th of April 1887 by John Gourlay, chartered accountant, trustee on the sequestrated estates of James Marshall, miller in Glasgow, and Thomas Alexander Marshall, engineer in Glasgow, against Duncan MacNeill, & Company, merchants in London, and the individual partners of that firm. The pursuer sought in the first conclusion to compel the defenders to fulfil the obligations undertaken by the respective second parties in (1) a feu-contract entered into between John Strapp and others, trustees of the deceased John Hinshelwood of the first part, and William Simm of the second part, dated 28th September and 6th October, and recorded 8th December 1876; (2) a feu-contract entered into