sions in his favour." It appears to me that the effect of this provision is that Charles having received his eighth, and at his father's death the £100 which was paid to him, the remainder of the estate less his £100 was directly destined to the other beneficiaries.

The testator's daughter Mary died unmarried and without issue five months after her father, and in regard to her share as well as the share of her predeceasing brother Archibald I think a different effect must be held to have taken place as regards the right of Fitzroy Maclean from the rights of his brother John and those of all of his sisters. Fitzroy was to be entitled to his own share "as soon after my death as my trustees shall deem proper," which really describes an absolute vesting *a morte testatoris*. But the accruing shares under the destinations-over were appointed, failing issue of the child deceasing, to be divided and applied amongst sons and daughters and their issue, "in the same manner as directed above in regard to their own respective shares." It results therefore that Fitzroy was entitled to payment of his part of accruing shares, that is, an equal part of such shares with his brother and sisters, less 20 per cent., while the shares of his brother and sisters of such accruing shares were to be held by the trustees subject to the power of purchasing an annuity if in their discretion they thought fit to do so in the case of any or all of the beneficiaries, but failing this power being exercised, then subject to the clause of survivorship or destination-over. The deed does not give any of these children a fee indefeasible. The trustees are to exercise their own discretion as to the propriety of purchasing an annuity for any of these children, and till they do so each child's share is held subject to the survivorship clause. It follows that as no annuity was purchased for any of the beneficiaries, the effect of the survivorship clause is that the judicial factor now holds the trust-estate for behoof of the claimant John Maclean, now represented by Mr Martin, C.A., his *curator bonis*. Fitzroy Maclean having died next after his sister Mary, could take no part of the shares of the others, who all survived him.

As to the rights of John Maclean, it is to be observed that the survivorship clause can have no further effect, for he is himself the last survivor. The judicial factor holds therefore for him, having no ulterior interests to protect. Again, the trustees, if they had survived, or the judicial factor now representing them, if he had the authority of the Court, might purchase an annuity with the residue of the estate, in his favour. This, however, would be most inexpedient, and clearly a wrong exercise of any discretion, and even if an annuity were purchased it would be subject to the debts and deeds of Mr John Maclean, who would be absolute fiar, for the settlement contains no authority for putting the annuities under trust for the annuitants, and beyond their deeds or the diligence of their creditors. In these circumstances I am of opinion that to all intents and purposes John Maclean is now the fiar of the residue, subject only to the rights of Fitzroy Maclean's representatives to their share of the estate original and accruing as before stated. If an annuity were purchased Mr John Maclean would be entitled to sell it, and he has an interest therefore to say it shall not be bought, and as there is no ulterior interest under the deed to be now protected, I think he is entitled to have the estate conveyed to him.

LORD ADAM, LORD M'LAREN, and the LORD PRESIDENT concurred.

The Court pronounced the following interlocutor:—

> "Find that the whole trust-estate vested in Mr John Maclean upon the death of Anne Maclean, with the exception of the original share (being in terms of the codicil one-seventh of the residue of the trust-estate under deduction as directed by the trust-deed) which was destined to Fitzroy Maclean, and the proportions of the shares destined to Archibald and Mary which fell to Fitzroy in consequence of their predecease: Find that the said original and accrescing shares vested in Fitzroy Maclean, and are payable to the heirs in moveables of the said Fitzroy Maclean: In respect of the above findings, find it unnecessary to answer the questions in detail."

Counsel for the First and Third Parties—Low—Patten. Agent—F. J. Martin, W.S.

Counsel for the Second Party—Jameson—Fraser. Agent—J. H. Sang, W.S.

Friday, July 11.

FIRST DIVISION.

[Lord Trayner, Ordinary.

TRAILL'S TRUSTEES *v.* GRIEVE AND OTHERS.

Crofters—Crofters Commission—Enlargement of Holdings—Crofters Holdings (Scotland) Act 1886 (49 *and* 50 *Vict. cap.* 29).

Held that the Crofters Commissioners have power under the Crofters Holdings (Scotland) Act 1886 to assign land under leases dated subsequent to the passing of the Act for the enlargement of Crofters Holdings.

On 9th August 1888 John Grieve, a crofter on the estate of Hobbister and Elsness, Isle of Sanday, Orkney, and eight others, crofters on the same estate, applied to the Crofters Commission, acting under the Crofters Holdings (Scotland) Act 1886 (49 and 50 Vict. cap. 29), to enlarge their holdings by making an order on the proprietor to let to the applicants a portion of the farm of Elsness occupied by James Swanson at a rent of £210. The application was

objected to on behalf of the proprietor both on the competency and on the merits. The Crofters Commissioners after hearing parties repelled the objections to the competency, holding that there was no completed lease between the proprietor of the estate and James Swanson, and after certain further procedure they found the application was reasonable, and that part of the land applied for was available for the enlargement of the applicants' holdings, and assigned part thereof to the applicants with entry at Martinmas 1889. Thereafter on 3rd March 1890 the order of the Crofters Commission having been presented to the Sheriff-Substitute in accordance with section 28 of the Crofters Holdings (Scotland) Act 1886, he pronounced decree in conformity therewith.

Thomas Dawson Brodie and others, proprietors in trust of the lands of Hobbister and Elsness, and James Swanson, brought a note of suspension and interdict, craving the Court to suspend the order of the Crofters Commission and the decree of the Sheriff, and to interdict the respondents from entering on or in any way interfering with any part of the farm of Elsness.

The complainers averred, *inter alia*—The lands assigned by order of the Crofter Commissioners to the respondents formed part of the farm of Elsness, which was in the occupation of James Swanson under a lease to him for fourteen years from Martinmas 1887. It was not within the right or power of the other complainers as proprietors and landlords to evict Swanson from the farm or from any part thereof with a view to letting any portion of it to the respondents, and there was no provision in the Crofters Holdings (Scotland) Act 1886 enabling or entitling the Commissioners to grant any such order as would effect such a result. The land in question was not available land in the sense of the Act.

The complainers pleaded, *inter alia*—"(1) The orders of the Commissioners dated 5th September 1888, 12th November 1888, and 24th April 1889, being *ultra vires*, and in excess of their statutory powers, these orders and the decree complained of should be suspended. (2) The land in question having been let on lease for a period of fourteen years is not available land in the sense of the statute, and the assignment thereof to the respondents is therefore illegal and unwarrantable."

The respondents pleaded, *inter alia*—"(5) The whole proceedings of the Commission having been in conformity with said statute, and their decision being declared by said statute to be final, the present note of suspension and interdict is incompetent. (6) Assuming the competency of determining the validity of the said orders under this action, no relevant or sufficient ground of objection to the said order has been stated by the complainers."

Section 11 of the Crofters Holdings (Scotland) Act provides—"It shall be lawful for any five or more crofters resident on neighbouring holdings in a crofting parish where any landlord or landlords, after application made to him or them, have refused to let to such crofters available land on reasonable terms for enlarging the holding of such crofters, to apply to the Crofters Commission setting forth that in the said parish or in an adjacent crofting parish there is land available for the enlargement of such holdings which they are willing to take on lease, but which the landlord or landlords refuse to let on reasonable terms, that is to say, on such terms as are usually obtained in the letting of land of the like quality and similarly situated in the same district for other purposes than that of a deer forest, or of a grouse moor, or other sporting purpose."

Section 12 provides—"The Crofters Commission shall upon receiving such an application as aforesaid intimate the same to the landlord or landlords therein alleged to have refused to let available land for the enlargment of such holdings as aforesaid, and shall afford such landlord or landlords and the crofters by whom the application is made an opportunity of being heard thereupon, and shall ascertain as far as possible how far the small size of the holdings has been due to the action of the landlord or of the crofters, and shall make such other inquiry as to them shall appear necessary and proper, and if they are satisfied (1) that there is land in the parish or in an adjacent crofting parish available for enlarging the holdings of the said crofters, but that the landlord or landlords refuse to let the same for that purpose on reasonable terms . . . the Crofters Commission may make an order for a lease of the said land, or such part or parts thereof as they may think proper, to the applicants, or one or more of them, at a fair rent, and upon such terms and conditions as the Crofters Commission shall consider just." . . .

Section 13 provides—"(1) Land shall not be deemed available land for the purposes of this Act unless it lies contiguous or near to land already in the occupancy of the crofters making the application, and belongs to the same landlord or landlords as the land occupied by the said crofters. (2) If the land is subject to an existing lease for a term of years, entered into prior to the commencement of this Act (not being a lease for the purposes of a deer forest, or of a grouse moor, or for other sporting purpose), it shall not be competent to assign any part thereof for the enlargement of the holdings of the crofters who have made the application, unless with the assent of the landlord or landlords and of the tenant or tenants of such land, and upon such terms as such landlord or landlords and tenant or tenants shall voluntarily agree to. (3) It shall not be competent for the Crofters Commission to assign land for the enlargement of the crofters' holdings. . . . (*b*) If the land forms part of any farm, whether subject to a lease or not, unless the Crofters Commission are satisfied that the part proposed to be assigned for the enlargement of the crofters holdings can be so assigned without material damage to the letting value of the remainder." "(*c*) If the land forms part of an existing farm or other holding, unless the rent or annual letting

value of such farm shall exceed £100."

Section 25 enacts that "the decision of the Crofters Commission in regard to any of the matters committed to their determination by this Act shall be final."

On 4th June 1890 the Lord Ordinary (TRAYNER) refused the prayer of the note and decerned.

"*Opinion.*—It is admitted that anything done by the Crofters Commission in pursuance of the powers conferred on them by the Act of 1886 is final. But the complainers seek to have the orders mentioned on record suspended, on the ground that in pronouncing them the Crofters Commission acted *ultra vires.* I am of opinion that there is nothing averred relevant to support that view. I sustain the respondents' fifth plea-in-law, and refuse the note with expenses."

The complainers reclaimed, and argued—The order pronounced by the Commissioners was either *ultra vires,* or could not receive effect till the conclusion of the existing lease. It was not within the Commissioners' powers to assign to crofters lands subject to an existing lease, or to oust the present tenant from possession. All that the crofters could get was a lease from the landlord, and he could not grant them a lease of land which he had already let. The words "whether subject to a lease or not" in sec. 13, sub-sec. (3) (*b*), meant even if not subject to a lease. The complainers were accordingly entitled to suspension and interdict as craved, the land assigned to the respondents not being available land for the enlargement of their holdings.

The respondents argued—(1) There was no completed lease of the farm of Elsness. (2) If the complainers' argument were held to be sound, the provision for the enlargement of crofters' holdings would be rendered in great part nugatory. It was clearly implied in sec. 13, sub-sec. (3) (*b*) and (*c*) that the Commissioners had power to interfere with a lease dated subsequent to the passing of the Act. The result of the assignation was that the crofters got an immediate addition to their holding—section 15. To give the crofters possession a decree by the Sheriff conform to the order of the Commissioners was required, and this had been granted in the present case—section 28. The question of what was available land was a question within the discretion of the Commissioners, and their decision was final—sections 12 and 25. The question whether the farm of Elsness was or was not let under a valid lease to the tenant was also argued, but that question turned out not to be material for the decision of the case.

At advising—

LORD PRESIDENT—Certain of the complainers in this case are the trustees of the late Mr Traill, who was the owner of lands in the Island of Sanday, and the other complainer is James Swanson, the tenant of the farm of Elsness, which is part of the trust-estate.

The Crofter Commissioners, in the exercise of the powers possessed by them under the 5th part of the Act, have taken a portion of the farm of Elsness, and have divided it among a number of crofters resident upon the lands adjoining to or in the neighbourhood of the lands in question; and the only point for our consideration is whether in so doing the Crofter Commissioners have acted within the powers conferred upon them, or whether they have exceeded those powers. One question which is in dispute is whether the farm of Elsness is let under a lease or not, but it is not, I think, necessary to consider that question, and I shall assume for the purpose of the judgment that the farm is under a lease, but at the same time a lease which was certainly not in force at the date of the passing of the Act, and therefore considering the subject so we must inquire whether the action of the Crofter Commissioners is justified.

Now, the 11th section of the Act makes it "lawful for any five or more crofters resident on neighbouring holdings in a crofting parish, where any landlord or landlords after application made to him or them have refused to let to such crofters available land on reasonable terms for enlargeing the holding of such crofters, to apply to the Crofters Commission . . . setting forth that in the said parish, or in an adjacent crofting parish, there is land available for the enlargement of such holdings which they are willing to take on lease, but which the landlord or landlords refuse to let on reasonable terms." . . . There are some rather important limitations on the right given to the crofters because the application has to be made by not less than five crofters holding crofts adjacent to or in the neighbourhood of the lands which they apply to have assigned to them. Upon receiving this application the Crofters Commission are (section 12) to proceed to comply with the proposal of the applicants, if they are satisfied (1) "that there is land in the parish or in an adjacent crofting parish available for enlarging the holdings of the said crofters;" and (2) "that the applicants are willing and able to pay a fair rent therefor, and that in the event of an order for the letting thereof being made, the applicants are able properly to cultivate the same in so far as it consists of arable land and properly to stock the same in so far as it consists of pasture land." If satisfied of these things then the Crofters Commission "may make an order for a lease of the said land, or such part or parts thereof as they may think proper to the applicants, or one or more of them, at a fair rent and upon such terms and conditions as the Crofters Commission shall consider just." Now that is, I think, very badly expressed, because it is plain from the other sections that the commission are not intended to make an order for a lease at all, but to assign land among the applicants if they are satisfied on the points to which I have referred. The language however amounts to a mere impropriety of expression, and does not affect the construction of the statute.

There is one expression in both the 11th

and 12th sections which is very important with reference to the present question, and that is "available land." We do not get much light on the point from the 11th and 12th sections themselves, but the other sections do give some light, and help us to determine what is "available land."

The 13th section begins thus—"Land shall not be deemed available land for the purposes of this Act unless it lies contiguous or near to land already in the occupancy of the crofters making the application, and belongs to the same landlord or landlords as the land occupied by the said crofters." Now, that is something like a definition of the expression. No doubt it is in the negative form, but it implies that all lands contiguous to land in the occupancy of the crofters making the application, and belonging to the same landlord, is available land unless it is rendered unavailable by some of the subsequent provisions of section 13. The second head of that section provides that "if the land is subject to an existing lease for a term of years, entered into prior to the commencement of this Act (not being a lease for the purposes of a deer forest, or of a grouse moor, or for other sporting purposes)," it shall not be available land, and the Crofters Commission are not allowed to take that land except with the consent of the landlord. Then the 3rd sub-section also renders it incompetent for the Crofters Commission to assign lands to crofters in certain particular circumstances specified in sub-divisions (*a*) to (*e*), and of course that also affects the question whether lands are available lands in the meaning of the previous sections. The two sub-divisions (*b*) and (*c*) are, I think, very important, keeping in view that the lands with which we are here concerned are lands under a lease, but a lease dated subsequent to the passing of the Act. If the lease had been dated prior to the Act the land let under it could not have been taken, but as the lease is not dated prior to the Act we must endeavour to find out whether there is any prohibition within the 13th section preventing land under lease dated subsequent to the Act from being taken for the enlargement of crofters' holdings.

The first of the two sub-divisions to which I have referred—sub-division (*b*)—reads thus, including the opening words of the sub-section which apply to all the sub-divisions—"It shall not be competent for the Crofters Commission to assign land for the enlargement of the crofters' holdings if the land forms part of any farm, whether subject to a lease or not, unless the Crofters Commission are satisfied that the part proposed to be assigned for the enlargement of the crofters holdings can be so assigned without material damage to the letting value of the remainder." Now, that is a qualification on the general power of the Crofters Commission to take available land, and it is left to the Commissioners to satisfy themselves whether the part proposed to be assigned can be so assigned without material damage to the letting value of the remainder—that is all within the discretion and judgment of the Crofters Commission, but the provision shows that land may be lawfully taken to enlarge the holdings of crofters though it is under a lease, such lease not being prior to the date of the Act.

Then sub-division (*c*), taking again the opening words of the sub-section, reads as follows—"It shall not be competent for the Crofters Commission to assign land for the enlargement of the crofters' holdings if the land forms part of an existing farm or other holding unless the rent or annual letting value of such farm or holding shall exceed one hundred pounds." Now, here again it is quite plain that the power of the Crofters Commission to take lands for the enlargement of crofters' holdings is placed under a certain limitation, namely, that the rent of the land to be taken must exceed £100. The Crofters Commission are accordingly entitled to take land forming part of an existing farm if the rent is above £100.

I therefore extract from these sub-divisions this inference, which it seems to me to be impossible to resist, first, that the Crofters Commission are entitled to take lands as available for the enlargement of crofters holdings if they are not under a lease dated prior to the Act, and although they are under a lease subsequent to the Act, and that they may interfere with the possession of a tenant under a lease, provided only that the farm is of such an extent as to yield upwards of £100 of rent a-year.

Now, it appears that the rent of Swanson's farm of Elsness is £210, and the farm therefore does not fall under the prohibition in sub-division (*c*), and not being under that prohibition, and being clearly under a lease subsequent to the Act, it is available land in the meaning of the statute.

It seems to me accordingly there is no reasonable ground for interfering with the action of the Commissioners. Their proceedings, so long as they keep within the discretion given them by the Act, are not subject to review, and we could only interfere with them if it was clearly shown that they had acted on a misrepresentation of the statute which confers powers upon them, and in excess of the powers thereby conferred. It is said, and there is a good deal of force in the remark, that the position in which the Crofters Commission has placed the landlord and tenant in the present case is one of hardship and difficulty, and I cannot help sympathising with their position. There is no doubt the Act provides no machinery for regulating the relations of landlord and tenant after a slice has been taken off a farm, and the statute may have a bad effect in this, but it is quite possible that a landlord and tenant may make a reasonable and proper settlement as to the future rent to be paid by the tenant or as to the continuation of the lease. These considerations, however, do not, I think, affect the construction of the statute, which seems to me to be too clear to be overridden by any extraneous considerations.

I am therefore of opinion that we should affirm the judgment of the Lord Ordinary.

LORD SHAND—The question to be determined is, whether the Crofter Commissioners have assumed a power which is not given to them by the statute in having detached a portion of Mr Swanson's farm, and in giving it to the crofters who possess the adjoining holdings?

If it had appeared that the Commissioners had dealt with land with which it was plain that the statute did not authorise them to deal, I cannot doubt that there would have been a remedy by appeal to this Court. But the respondents say that the Commissioners have acted quite within their powers, and I have come to be of opinion with your Lordship that this is so.

The Commissioners, it appears, considered the question whether Mr Swanson held a lease of his ground or farm or not, and they seem to have held that he had no lease. But I think the case may be taken upon the footing that there is such a lease. If the documents on which the complainers have founded were communicated to Swanson, and he entered into possession of the farm on the faith of these documents, there would then be an existing lease, and if the case had turned upon this some proof would been necessary.

But the lease is dated subsequently to the statute, and it appears to me therefore, as it does to your Lordship, that it is not of a kind which prevents the Commissioners from dealing with the subjects which were let under it. The decision of the case depends upon the construction of the 13th section of the Crofters Act, and I am content with what your Lordship has said upon that and the other sections. I only wish to add with reference to the 13th section that it contemplates that land shall be held to be available for the enlargement of crofter holdings in either of two cases—(1) that the land is contiguous to these holdings, and (2) that it belongs to the same landlord as the holdings belong to. It further enacts that if the land in question is in occupation under a lease dated prior to the Act it shall not be competent to assign it or any part of it for the purpose of enlarging the holdings unless with the consent of both landlord and tenant. There can be no doubt therefore that if the land in question had been in that position, and the Commissioners had assigned it to crofters for the enlargement of their holdings, the assignation might have been cut down on the ground that the Commissioners had exceeded their powers. But the language of heads *b* and *c* of subsection 3 of the 13th section clearly shows that if a landlord and tenant have entered into a lease after the date of the Act the land so let may be made in a crofting parish the subject of assignation to crofters occupying adjoining holdings.

In regard to the policy of this provision we had arguments advanced to us from both sides of the bar. I think that there is much force in what Mr Jameson said, that unless such a power had been given to the Commissioners the scheme for the enlargement of crofter holdings might have been defeated. Immediately after the passing of the Act new leases might have been entered into for long periods which would have entirely prevented the allocation to the crofters of any portion of the lands thereby let. Apart, however, from these considerations, heads *b* and *c* of the 3rd sub-section of clause 13 of the Act to which I have referred make it clear that the Commissioners can deal with land in the position of this farm. The words are—"It shall not be competent for the Commissioners to assign land for the enlargement of the crofters' holdings . . . (*b*) if the land forms part of any farm, whether subject to a lease or not, unless the Crofters Commission are satisfied that the part proposed to be assigned . . . can be so assigned without material damage to the letting value of the remainder." The words "whether subject to a lease" must mean to a lease granted after the passing of the Act, because the case of leases dated prior to the Act is expressly dealt with in a previous clause. A similar observation may be made as regards head *c* of the sub-section, because the sole provision there is that the letting value of the farm or holding shall exceed £100. No doubt we might have found from other parts of the Act indications tending to show that the words in question were to be limited and were not to receive their natural meaning. For one thing it is said that the result of holding that they apply to land held under lease will be to throw matters entirely loose between the landlord and tenant of such farms. The question would arise what is to become of the old lease. Is it to be at an end, or is the Court in the exercise of its equitable jurisdiction to say that in the circumstances there must be some power in them to fix the terms on which the contract of lease is in future to subsist, or to compel the parties to submit the matter to arbitration as regards the value to be put upon the remainder of the farm after the allocation to the crofters has been made. There may be a great deal of room for the argument that that is an undesirable state of matters to bring about, but the question does not arise here. All that can now be said is that the argument which is to prevail, while it is sound in point of fact, leaves a number of troublesome and difficult questions behind. But we cannot upon that ground refrain from giving full effect to the words of the 11th section, which appear to be clear.

Another objection which was urged was, that while by section 11 it is provided that the five or more crofters making application to the Commissioners must show that they have applied to their landlord for available land, and that he has refused to let it, this will be meaningless if it refers to land let under a lease which the landlord can have no power to let. There is, however, I am afraid, a good deal in the observation that this is just one of the difficulties which we not unfrequently find arise from modern legislation, and that this is not enough to override the clear effect of the other provisions of the Act.

Another suggestion which was made on behalf of the reclaimers was that the right conferred upon the crofters was one which in the case of a current lease ought not to take effect at once, and that a reconciliation between the conflicting provisions of the statute was to be found in the view that the order of the Commissioners is not intended to come into operation until the end of the lease. I think the reclaimers must fail in that contention. There is nothing in the statute to that effect, and nothing to show that possession is not to be given it might be for seventeen or eighteen years after the date of the order, that is, ten years after the functions of the Commissioners have expired.

On the whole matter, I think that the argument for the reclaimers ought to be repelled, and that we should adhere to the judgment of the Lord Ordinary.

LORD M'LAREN concurred.

LORD ADAM was absent.

The Court adhered.

Counsel for the Complainers — Graham Murray — Macfarlane. Agents—John C. Brodie & Sons, W.S.

Counsel for the Respondents—Jameson —Orr. Agent—J. D. Macaulay, S.S.C.

Thursday, July 17.

SECOND DIVISION.

[Sheriff of Lanarkshire.

SKINNER & COMPANY *v.* NEILSON AND OTHERS.

Ship—Contract—Principal and Agent—Commission.

In 1875 a shipbroker contracted with a shipbuilder for a ship, of which when built the shipbroker was to have the management. Each agreed to retain or find purchasers for one-half of the shares of the ship, and the shipbuilder paid to the shipbroker a commission calculated at the rate of 1¼ per cent. upon the whole price of the ship, or 2½ upon the price of the share for which he had become responsible. The ship was built under this arrangement, and managed by the shipbroker till his death in 1884. The accounts and documents, including the cost of the vessel and instructing the payment of this commission, were open to inspection of all the shareholders from the first, and the accounts were regularly submitted to a firm of professional accountants in London, who audited them and issued an abstract to the shareholders. The fact that the shipbroker had received this sum of commission was well-known to the accountants, but was not stated by them in their abstracts of accounts issued to the shareholders. No objection was made to the accounts before 1884. In 1886 four of the shareholders, who had in 1877 bought their shares from the shipbuilder, raised an action to recover their respective proportions of the commission paid to the shipbroker, on the ground that he as part-owner with them had acted on their account in the contract for the ship, and was bound to communicate to them the value of any commission he had received from the shipbuilders.

Held (Lord Lee *dub.*) that the contract for the ship was one between the defender and the shipbuilder, that the relation of principal and agent did not exist between the defender and the pursuers, who were to be regarded as subsequent purchasers, that the accounts so dealt with must be taken to be correct, and that the commission did not increase the price of the ship to the pursuers, and the defender assoilzied.

Walter Montgomerie Neilson, James Neilson, James Wyllie Guild, trustee on the estate of James Morton, and Andrew Maxwell, as four of the shareholders in the steamship "Loudoun Castle," raised this action in the Sheriff Court at Glasgow against Thomas Skinner & Company, shipbrokers, St Vincent Place, Glasgow, for payment of their respective shares of £700, alleged to be a commission wrongfully received by the defenders from Messrs Thomson & Company, builders of the ship, and not communicated to the pursuers as joint adventurers in the transaction.

On 9th December 1875 Messrs Thomson wrote to Thomas Skinner—"After going over the several alterations and additions you require in the specification of new steamer sent you by us, we hereby offer to build the same, according to specification as arranged between us, for the sum of fifty-six thousand pounds, nett, to us," &c. On the same day Mr Skinner wrote to Messrs Thomson accepting the offer, and also upon the same day Messrs Thomson wrote to Mr Skinner—"We agree to pay you a commission of one and a quarter per cent. on the contract price of new steamer." The commission amounted to £700. It appeared from the correspondence that Mr Skinner was to take 32/64ths and endeavour to dispose of them among his friends, and that the Messrs Thomson were to take or find purchasers for the remaining 32/64ths. The ship was to be ready on 15th January 1877, and on 9th February Messrs Thomson wrote to Skinner & Company—"Dear Sirs—We have yours of yesterday, and now beg to hand herewith the agreement for new steamer signed by our friends for 32/64ths. We append address of the parties." The names appended included those of the pursuers. From further correspondence it appeared that all the money to be paid for the ship was sent through Skinner & Company. The ship was built and was afterwards managed by Mr Skinner as ship's husband. Upon 15th June 1877 Morton wrote to Skinner & Company—"I duly received yours of yesterday, stating that the book and vouchers of the 'Dunottar Castle'