He said—"The invalidity of the marriage, if it cannot be consummated on account of some structural difficulty, is undoubted, but the basis of the interference of the Court is not the structural defect but the impracticability of consummation." I understand the Lord Ordinary to agree also on this view of the law. He has, however, refused decree on the ground that the evidence falls short of satisfying him that the non-consummation was due to inability on the part of the defender. Now, I admit this is a question of fact, and each case must be judged on its own circumstances. But in so far as a general rule can be laid down, I am again content to take the standard laid down by Lord Penzance. "The impossibility," he says, "must be practical. . . . The question is a practical one, and I cannot help asking myself what is the husband to do? . . . Is he by mere brute force to oblige his wife to submit to connection? Everyone must reject such an idea." And the same rule was expressed in somewhat different language by Sir Francis Jeune in the case of *F.* v. *P.* (75 L.T. 192), when he said that if it be satisfactorily proved that repeated endeavours of a potent husband, who has tried all means short of force, had been uniformly unsuccessful, it was for the Court, in the absence of any alleged or probable motive for wilful refusal, to draw the inference that the non-consummation was due to some form of incapacity on the part of the wife.

I do not think it necessary to review the details of the evidence in this case. I content myself with saying that I am satisfied that the following facts have been proved:—(1) That the marriage never was actually consummated. (2) That the husband was able and anxious to consummate and had more than sufficient opportunities, free from any circumstances of a disturbing nature, either mental or physical, on which to attempt consummation. (3) That, short of physical force, he adopted all ordinary expedients to induce the wife to admit connection. (4) That no reason whatever is suggested for a wilful refusal on the part of the wife, and that the whole probabilities of the case point to an opposite conclusion. In the circumstances I think that the Court is entitled to draw the inference that there was here a practical incapacity on the part of the wife, and that the husband is entitled to the remedy he asks for.

LORD M'LAREN, LORD KINNEAR, and LORD PEARSON concurred.

The Court recalled the interlocutor of the Lord Ordinary of 22nd November 1905 save in so far as it dealt with expenses, and found, declared, and decerned in terms of the conclusions of the summons, finding the defender entitled to expenses since the date of the said interlocutor.

Counsel for the Pursuer and Reclaimer—Munro. Agent—Jas. Campbell Irons, S.S.C.

Counsel for the Defender and Respondent—Lyall Grant. Agents—Cowan & Stewart, W.S.

Tuesday, March 7.

SECOND DIVISION.

COUPER *v.* M'KENZIE.

Ship—Collision—Limitation of Liability—Fishing-Boat—Fishing-Boat Registered only in Fishing-Boat Register under Part IV of Merchant Shipping Act 1894 *Entitled to Limitation of Liability—Merchant Shipping Act* 1894 (57 *and* 58 *Vict. cap.* 60), *secs.* 2, 373, 503, 508.

Section 503 of the Merchant Shipping Act of 1894 limits a shipowner's liability in certain cases of loss of life, injury, or damage. Section 508 provides that this benefit shall not extend to any British ship which is not recognised as a British ship within the meaning of the Act. Section 2 provides, sub-sec. 1, that every British ship (with exceptions enumerated in sec. 3 not here in point) shall be "registered under this Act;" sub-sec. 2, that any such ship "not registered under this Act" shall not be recognised as a British ship.

Held that a British fishing-boat registered only in the Fishing-Boat Register under Part IV of the Act, and not under Part I, was a British ship registered under the Act within the meaning of sec. 2, and that its owner was entitled to the limitation of liability conferred by sec. 503.

Ship—Collision—Limitation of Liability—Fishing-Boat—Tonnage—Deduction of Crew Space—Surveyor's Certificate—Registration—Merchant Shipping Act 1894 (57 *and* 58 *Vict. cap.* 60).

In calculating the tonnage of a steam fishing-boat, registered only under Part IV of the Merchant Shipping Act 1894, for the purpose of the limitation of the owner's liability under sec. 503, *held* that the owner was entitled to deduct crew space which was certified by a Board of Trade surveyor, although neither the certificate nor any entries in connection with it had been registered in the register appointed to be kept under Part I of the Act.

Expenses—Ship—Collision—Petition for Limitation of Liability—Respondent Opposing Limitation Liable for Expenses Caused by Opposition—Merchant Shipping Act 1894 (57 *and* 58 *Vict. cap.* 60), *sec.* 504.

In a petition for limitation of liability brought under sec. 504 of the Merchant Shipping Act 1894, the respondent, who opposed the petition, contending unsuccessfully that the petitioner was not entitled to the benefit of limitation, *held* liable to the petitioner in such expenses as had been caused by his contention.

Statute—Statutory Law—Interpretation—Previous Legislation.

Per Lord Kyllachy—"I should doubt much whether the courts of law are at liberty, in construing Acts of Parliament, to do so with reference to the

course of previous legislation, or to inferences which they may be disposed to draw from previous statutes as to the probable intentions of the Legislature."

The Merchant Shipping Act 1894 (57 and 58 Vict. cap. 60) is divided into Parts, of which Part I, headed "Registry," includes sections 1 to 91; Part IV, headed "Fishing-Boats," includes sections 369 to 417; and Part VIII, headed "Liability of Shipowners," includes sections 502 to 509.

Section 503 enacts—"(1) The owners of a ship, British or foreign, shall not, where all or any of the following occurrences take place without their actual fault or privity (that is to say)— . . . . (*d*) Where any loss or damage is caused to any other vessel, or to any goods, merchandise, or other things whatsoever on board any other vessel, by reason of the improper navigation of the ship, be liable to damages beyond the following amounts (that is to say)— . . . . (*ii*) In respect of loss of, or damage to, vessels, goods, merchandise, or other things, whether there be in addition loss of life or personal injury or not, an aggregate amount not exceeding £8 for each ton of their ship's tonnage. (2) For the purposes of this section—(*a*) The tonnage of a steamship shall be her gross tonnage without deduction on account of engine room; and the tonnage of a sailing ship shall be her registered tonnage: Provided that there shall not be included in such tonnage any space occupied by seamen or apprentices, and appropriated to their use, which is certified under the regulations scheduled to this Act with regard thereto."

Section 504—"Where any liability is alleged to have been incurred by the owner of a British or foreign ship in respect of loss of life, personal injury, or loss of or damage to vessels or goods, and several claims are made or apprehended in respect of that liability, then, the owner may apply in England and Ireland to the High Court, or in Scotland to the Court of Session, or in a British possession to any competent court, and that court may determine the amount of the owner's liability and may distribute that amount rateably among the several claimants, and may stay any proceedings pending in any other court in relation to the same matter, and may proceed in such manner and subject to such regulations as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of any costs, as the court thinks just."

The other sections of the Act which are of importance for the purposes of this report are quoted in the opinion of Lord Stormonth Darling, *infra*.

George Couper, fishcurer, Helmsdale, presented a petition under section 504 of the Merchant Shipping Act 1894 for limitation of liability in respect of damage caused by the "Pansy" in collision. From the statements made by him in his petition it appeared that he was the registered owner of the British steam sea fishing-boat 'Pansy' of Helmsdale, the gross tonnage of which was 72·61 tons. The berthing accommodation for seamen and apprentices and appropriated to their use amounted to 13·20 tons, which, being deducted, left a tonnage of 59·41 tons. The 'Pansy' was not registered under Part I of The Merchant Shipping Act 1894. She was registered under Part IV of The Merchant Shipping Act 1894. She was measured, and her deductions in respect of crew accommodation were ascertained with a view to registration under Part I of the Act, but the registration under Part I was never carried through. Her measurements were duly made by a Board of Trade surveyor with a view to registry under Part I of the Act, and these measurements were adopted as correct when she was registered under Part IV of the Act, conform to certificate granted by him.

On 22nd February 1905 the "Pansy" came into collision with the British sea fishing-boat "Swift," of Burghead, 21 miles to the north-west of the Butt of Lewis. The collision was due to the fault of those in charge of the "Pansy," for whom the petitioner was responsible, but without actual fault or privity upon his part. The "Swift" was seriously damaged, and a claim was made by her owners against the petitioner. He was also threatened with other claims, and, in particular, an action had been raised in the Court of Session against him at the instance of Daniel M'Kenzie, fisherman, Burghead, a member of the crew of the "Swift," concluding for over a £1000 of damages. Couper accordingly presented the present petition under section 504 of the Act craving the Court to limit his total liability as owner of the "Pansy" to £8 per ton on 59·41 tons, *i.e.*, to a sum of £475, 2s. 8d.; and further, under section 504, to rank the various claimants to the proportions of that sum to which they might respectively be found entitled in the present process.

Daniel M'Kenzie opposed the petition, and lodged answers, in which he stated, *inter alia*—"The register entry of the said British steam sea fishing-boat 'Pansy' in the register of fishing-boats, under Part IV of the Merchant Shipping Act 1894, is referred to for its terms, beyond which no admission is made. The amount of the berthing accommodation for seaman and apprentices, and appropriated to their use, is not entered in said register. Denied that the petitioner's liability for loss and damage caused by said collision is limited under section 503 of the Merchant Shipping Act 1894, and that the petitioner is entitled to have his liability limited under the said Act. The said section applies only to the owners of 'ships, British or foreign,' registered under said Act. The said fishing-boat 'Pansy' was not registered as a British ship under said Act, as provided by Part I thereof, and is therefore not entitled to recognition as a British ship, or to the benefits, privileges, advantages, or protection enjoyed by British ships, within the meaning and under the provisions of the

said Act. The petitioner, as owner of the said 'Pansy,' is therefore not entitled to limitation of liability under section 503 of the said Act, and the prayer of the petition accordingly should be refused. The respondent further maintains that the said 'Pansy' not having been registered under the said Act, and the measurements and deductions contained in the surveyor's certificate produced by the petitioner not having been entered in the register of British ships appointed to be kept by the said Act in terms of Part I thereof, the said certificate is inadmissible as evidence of measurements and deductions, and is ineffectual and of no force or effect whatever, and the petitioner is not entitled to found thereon for the purpose of making the deductions claimed."

Argued for the petitioner—(1) The privileges of sections 503 and 504 of the Merchant Shipping Act 1894, as to limitation of liability, were admittedly by section 508 restricted to 'recognised' British ships, and by section 2 (2) the only recognised British ships are those 'registered under this Act.' The "Pansy," however, was a British ship, (section 1 (*a*), section 742), and her registration in the Fishing Boat Register under Part IV, section 373 to 375 of the Act, was registration 'under this Act,' and it was unnecessary for her to be in addition registered under Part I. The words of section 2 (1) were "shall be registered under this Act," not "under Part I of this Act," which would have been the expression used had the respondent's contention been sound. Throughout the Act, wherever a section applied to one Part only, the words used were "this part of this Act." The scheme of the Act was to have one register for fishing boats, and one for other vessels, but there was nothing in the Act, or in common sense, to indicate that in matters of privilege the one was in a better position than the other. If the respondent were right, a fishing boat, to obtain the ordinary advantages of a British ship, would have to be twice registered, which was very improbable. (2) The petitioner was entitled to deduct 13·20 tons in respect of space occupied by seamen and apprentices.—Act of 1894, sections 503, sub-section 2 (*a*), 210, Schedule 6 (3). It was evidenced by a certificate of a Board of Trade surveyor, which was all that was required by the Act.

Argued for the respondent—(1) The respondent was not entitled to the privileges conferred by sections 503 and 504 of the Act, these being conferred solely on British ships registered under Part I of the Act—see section 2 (2). Looking to the terms of section 2 it was further plain that the ship must be registered actually as a British ship; that could only be done under Part I, the part of the Act which dealt with British ships, whereas the "Pansy" was only registered as a fishing boat under Part IV, which was obviously insufficient. The same result was arrived at if the question were dealt with historically. [The respondent's argument on this point is summarised by Lord Stormonth Darling in the third paragraph of his opinion. Besides the Acts and sections referred to by his Lordship, and those already quoted, the respondent referred to Merchant Shipping Act 1854, secs. 503, 504, the Merchant Shipping Acts Amendment Act 1862, section 54, the Sea Fisheries Acts 1843 and 1883, the Sea Fisheries (Scotland) Amendment Act 1885, the Sea Fishing Boats (Scotland) Act 1886, and Orders in Council 24th March 1902]. The "*Andalusian*," 1878, 3 P.D. 182, was an authority for the proposition that only a "recognised British ship" was entitled to limitation of liability. (2) There could be no deduction allowed for crew space, as the measurements and deductions comprised in the certificate had not been entered in the Register of British Ships under Part I of the Act—Act of 1894, section 6, 116, 14, 503 (2) (*a*), 77 (1), 77 (3), 79 (1) (*a*), i, Schedule 6 (3).

LORD KYLLACHY—The question in this case is whether the petitioner's vessel the "Pansy" required to be registered under Part I of the Act of 1894. She was undoubtedly registered as a British sea-fishing boat under Part IV of the Act, but the respondent says that although a British fishing boat, she is also a British ship, and as such is bound also to register under Part I. It is not disputed, that if being bound so to register under Part I, she does not do so, she is thereby debarred from recognition as a British ship; and further, that if so debarred, she is, under section 508 of the Act, expressly deprived of the limitation of liability provided by the 503rd section in favour of all ships, British or foreign, the limitation which her owners seek to make good in the present petition.

It must be acknowledged that the question thus raised is a large one. For I agree with the petitioner's counsel that it virtually applies to all sea-fishing boats, that is to say, to all sea-fishing boats not propelled by oars whatever their tonnage. In other words, the exemption under section 3, sub-section 1, does not, so far as I see, cover sea-fishing boats, even if under fifteen tons' burthen; while the exemption in sub-section 2 of the same section applies only to a particular class of vessels fishing or trading on the shores of Newfoundland or in the Gulf of St Lawrence. Hence the respondent's contention seems to involve among other results, this, that all British sea-fishing boats, if they have registered only under Part IV of the Act of 1894, are in the position of being offenders against the Act, and are thereby subject not only to the penalty of non-recognition as British ships with all the disabilities thence arising, but also to the further penalty of being liable to detention at any port until a certificate of registration—that is to say, a certificate of registration under Part I—is produced by the master. This is plainly involved in the provisions of section 2, sub-section 3, which, if the respondents are right, so enacts in express terms. It is not a question of option to register, option, which if not exercised involves the loss of certain *privileges*. There is much more involved than the loss of privileges; and even as

regards privileges, the loss, it will be observed, results really because being required to register, the vessel by not doing so is in default, and is thus under the Maritime Code really in a position of outlawry.

It must also be acknowledged that the question being thus large, the proposition maintained by the respondent—having regard to the general scheme of the Act—is somewhat difficult. For not only does the Act of 1894 (differing from the previous Act of 1854, which was passed before there was any registry of fishing ships) recognise a separate registry of fishing ships, but also, by partly incorporating the provisions of the Act of 1868 (which first established that register), makes careful provision for the expansion of that register by Order in Council. It provides, by section 373, subsection 3, *inter alia*, that "Her Majesty may by Order in Council apply to the entry of fishing boats in the Fishing Boat Register, and to all matters incidental thereto, such, if any, of the enactments contained in this or any other Act relating to the registry of British ships, and with such modifications and alterations as may be found desirable." It is not, I apprehend, doubtful that it would under this power be competent to the King by Order in Council to make, if it was thought proper, the Fishing Boats Register under Part IV a complete counterpart of the Register of British Ships under Part I. For example, there might be added to it, *inter alia*, a more or less complete code of conveyancing, such as regards Scotch fishing boats was added to the 1868 Act by the Scotch Statute of 1886. And other additions might be figured. But if the respondent is right, there would still be required of all fishing boats the double registration for which he (the respondent) contends. However complete and perfect the Fishing Boat Register might be, no Order in Council could overrule the statutory provisions of Part I of the Act of 1894, or relieve sea-fishing boats, as being also (if not propelled by oars) British ships, from the *ex hypothesi* obligation to register under Part I of the Act. Now, that is a view of the statute and of its operation in quite possible circumstances from which I confess I shrink.

On the other hand, I am quite alive to what the respondent has called his "historical" argument. I am not, I confess, impressed by the initial point of that argument, to the effect that, if the petitioner is right, the Act of 1894 made in this matter, and by, as he says a mere change of phraseology, a large innovation on the existing law. It quite certainly did make a large innovation. It did so by for the first time recognising fishing boats—that is to say, vessels of whatever size and however propelled engaged in sea-fishing—recognising them as a separate class having a separate register. But so far I fail to see that there is anything surprising. A codifying statute, such as the Act of 1894, might quite well be expected to enlarge the scope of the previous legislation. Perhaps, however, the observation which really falls to be made is not so much that, if the petitioner is right, an innovation was by the Act of 1894 made on the existing law, but that on the same assumption it is not quite intelligible why it was not made sooner—that is to say, immediately after the passing of the Act of 1868—the Act by which, as I have already said, the existing Fishing Boat Register was established. And I acknowledge that, so far as it goes, that particular observation is just. For it is quite true—at least it seemed to be common ground—that from 1868 to 1894 double registration was necessary with respect to all British sea-fishing boats which were also British ships—that is to say, which were not propelled only by oars. It was so, and could not be otherwise; because the Act of 1854 could not, of course, recognise a Fishing Boat Register which was in 1854 non-existent; while between 1868 and 1894 there was apparently no enactment touching the matter except the Scotch Act of 1886 already referred to.

After all, however, courts of law are not called upon to explain or justify the course of legislation upon this or other matters. Indeed, I should doubt much whether they are at liberty, in construing Acts of Parliament, to do so with reference to the course of previous legislation, or to inferences which they may be disposed to draw from previous statutes as to the probable intentions of the Legislature. Their duty, I apprehend, is to interpret in its natural sense the language of the particular enactment which is before them. And the particular enactment here to be construed is, I apprehend, simply the second section of the Act of 1894—the existing Merchant Shipping Act—which section is expressed thus—"Every British ship shall, unless exempted from registry, be registered under this Act." The whole question is what is meant by the words "*under this Act.*" Do these words cover, and are they satisfied by, registration under Part IV of the Act? Or do they cover only, and are they satisfied only by, registration under Part I of the Act?

Now, applying ordinary principles of construction, I am unable to hold that registration "under this Act" means, and means only, registration under Part I of the Act. *Prima facie* registration under Part IV is as much registration under the Act as registration under Part I. Nor can I conceive any reason why, if Part I only was meant, that should not have been expressed. It would have been easy, if it had been intended, to use the words "under this part of the Act"—a phraseology in fact used in nearly all the subsequent parts; and, as I have said, I can conceive no reason why, if the respondent is right, that should not have been the phraseology used here. I, of course, admit the possibility of even plain words being controlled, and their natural meaning displaced, by glosses derived from the context, or perhaps also from the general scheme of the particular statute. That though difficult is not impossible. But in the present case nothing was brought under our notice at the discussion which seemed to justify such a

proceeding. Nor, having gone over the statute with as much care as I could, have I discovered anything tending in that direction. Moreover, having regard to the really penal character of the enactment under construction, or, at least, the penal consequences attaching to its breach, I have myself difficulty in figuring the kind of gloss, short of declaration plain, which would in such circumstances be sufficient. I do not, however, propose to pursue this part of the argument. For I have had the opportunity of reading the judgment which is to be delivered by Lord Stormonth Darling, and I content myself with expressing my entire concurrence with his opinion. For the same reason I do not think it necessary to say anything as to the sufficiency of the surveyor's certificate (a certificate, as it appears, obtained by the petitioner when it was proposed to register his vessel under Part I) as satisfying the requirements with respect to deductions of section 503, sub-section 2 (*a*), and the relative schedule (No. 6) attached to the Act. I agree with what Lord Stormonth Darling says upon that subject. The result is that, in my opinion, we should repel the respondent's answers and grant the prayer of the petition.

LORD STORMONTH DARLING—Before the owner of any British ship can apply, as this petitioner does, for limitation of his liability under section 504 of the Merchant Shipping Act 1894, it is necessary for him to show that his ship is recognised as a British ship, for it is provided by section 508 that "nothing in this part of this Act (which includes section 504) shall be construed to . . . extend to any British ship, which is not recognised as a British ship within the meaning of this Act." The reason of this condition is to be found in section 72 of the Act, which provides that "where it is declared by this Act that a British ship shall not be recognised as a British ship, that ship shall not be entitled to any benefits, privileges, advantages or protection usually enjoyed by British ships," and as sections 503 and 504 confer a benefit or privilege on the owner, it naturally follows that he must be in a position to claim the benefit so conferred. It is admitted that the petitioner is the owner of the British steam sea-fishing boat "Pansy" of Helmsdale, the gross tonnage of which is 72·61 tons, and that she is entered in the Fishing Boat Register under Part IV of the Merchant Shipping Act 1894, but is not registered in what may be called the General Registry of British ships under Part I. Now, Part I, after dealing with the qualification for owning a British ship, enacts, by section 2 (1), that "every British ship shall, unless exempted from registry, be registered under this Act;" again, by section 2 (2), that "if a ship required by this Act to be registered is not registered under this Act, she shall not be recognised as a British ship;" and yet again, by section 2 (3), that "a ship required by this Act to be registered may be detained until the master of the ship, if so required, produces the certificate of the registry of the ship." Section 3 then proceeds to state certain exemptions from registry, which do not affect such a vessel as the "Pansy."

The question is whether the "Pansy's" registration under Part IV is sufficient to entitle her to recognition as a British ship, and therefore to the benefits of sections 503-4, or whether she is not so entitled without registration under Part I. In support of the latter view it is urged by the respondent that, in order to recognition as a British ship, there must be registration as a British ship, which can only (he says) be effected under Part I. The petitioner, on the other hand, maintains that the "Pansy" is "registered under this Act" by being registered under Part IV, and that the penalty of non-recognition as a British ship attaches, not to a ship which is registered under a different part of the Act, but only to a ship which, being required by the Act to be registered, is not registered at all. This question is, I think, difficult, and it is certainly novel, but I have come to think that the petitioner's argument ought to prevail.

The chief difficulty I have felt in coming to that conclusion is founded on what I may call the historical argument. The Act of 1894 was the first Merchant Shipping Act which contained any reference to a register of fishing boats. But the thing itself had existed since the passing of the Sea Fisheries Act 1868. That was an Act to carry into effect a convention with France, which required that all British and French fishing boats should be lettered and numbered and have official papers, and should for that purpose be entered or registered in a register for sea-fishing boats. The Act of 1868 accordingly, by sections 22 to 24, proceeded to establish such a register, and the Merchant Shipping Act of 1894, while repealing these clauses by the 22nd Schedule, substantially re-enacted them by sections 373 to 375. These sections make entry in the Fishing Boats Register compulsory on every fishing boat which is not exempted by Order in Council, and declare (see section 373 (3)) that if a fishing boat required to be so entered is not so entered, she shall not be entitled to any of the privileges or advantages of a British fishing boat, these being apparently the privileges or advantages secured by the convention, and by legislation and Orders in Council affecting fishing boats as such. In any view, I do not think that section 373 (3) affects the present question one way or other. It is, however, plain that between 1868 and 1894 no entry in the Fishing Boats Register under the Act of 1868, would have carried with it the right to limitation of liability under the then existing Merchant Shipping Act, for the simple reason that the Act then in force (at least as regards limitation of liability and the register) was the Act of 1854, which contained a clause (section 516) in similar terms to section 508 of the present Act. Therefore no vessel, however well registered in the then existing Fishing Boats Register, could at that time have been "a recognised British ship," if

not entered in the only registry which the Act of 1854 provided.

But while I have felt the force of this argument, I greatly doubt whether it is permissible in the construction of a statute to go back to a state of things which the statute has expressly changed. Before 1894 the Merchant Shipping Act enacted only one register. Now it enacts two. If, instead of providing that every British ship (and this is admittedly a British ship) shall be registered "under this Act," and if not registered "under this Act," shall not be recognised as a British ship, it had substituted the words "under this part of this Act," the case would have been clear in favour of the respondent. One may conjecture that in using the phrase "under this Act" the draftsman had his attention fixed on the fact that in former Merchant Shipping Acts there had been only one register. Even so, he varied the language, for the corresponding sections of the Act of 1854 did not contain the words "under this Act" but the words "shall be registered in manner hereinafter mentioned." But all this is mere conjecture. The language must be taken as it stands, and when, in a statute containing 14 Parts and 748 sections, you find that almost in every Part, including Part I, express reference is made to "this Part of this Act," shutting off the Parts as it were into watertight compartments, it is reasonable to conclude that there is some meaning, and not merely inadvertence, in the rare cases where the reference is to "this Act" alone.

Now, if that be the correct construction of section 2 (1) and (2), it cannot be doubted that the "Pansy" is "registered under this Act" by being registered under Part IV, nor that being so registered she is entitled to recognition as a British ship. She is in fact a British ship, because her ownership is British, and by section 742 the word "ship" includes "every description of vessel used in navigation not propelled by oars." Nor do I think that there is any warrant for the respondent's argument that she must be registered "as a British ship." I do not find that these words are used in the Act of 1894 itself. It is true that they occur in section 15 of the Sea Fishing Boats (Scotland) Act 1886, which is still in force. But the plain purpose of that section is to prevent the confusion that might arise if transfers, mortgages, and transmissions of a fishing boat were allowed to be made both in the General Register of British Ships and in the Fishing Boat Register; and when it refers to registration "as a ship" under the provisions of the Merchant Shipping Act 1854 (which in 1886 was still law), it does no more than state a fact. The General Register, whether as formerly under the Act of 1854, or as now under Part I of the Act of 1894, is a register of British ships and nothing else.

What seems to me more significant, is that the Act of 1894 itself, the schedules attached to the Order in Council of 24th March 1902, passed by virtue of that Act, and the Sea Fishing Boats (Scotland) Act 1886 (above referred to), all recognise that a fishing boat may be entered in both registers. In this very case of the "Pansy," it appears that proceedings were commenced for registration under Part I, but for some reason were never carried through.

It was not explained to us what advantage is to be gained by a mere optional registration in one register when registration in another is compulsory. Probably it has something to do with the deductions from tonnage allowed by section 79, and with the practice which, I understand, prevails in England of charging port dues on the tonnage instead of, as in Scotland, on the length of keel. Even in the case of a Scottish fishing boat, if she frequents English ports, it may, I suppose, be worth while to register under Part I. But however that may be, the optional character of registration under Part I seems to me conclusive of the point that the "Pansy" cannot be described as "required by this Act" to be so registered under penalty of not being recognised as a British ship. And if registration of a fishing boat under Part I is not compulsory, I fail to find any warrant for denying to her owner the benefit of sections 503 and 504, or subjecting her to the penalties which attach to non-registration. In short, the question all comes round to the true construction of section 2 (1) and (2), and in my opinion registration of a fishing boat under Part IV is as good for the purposes of that section as registration under both Parts I and IV would be.

A minor question was raised by the respondent as to the deduction from the gross tonnage of 13·20 tons claimed by the petitioner in respect of berthing accommodation for seamen and apprentices. This deduction is evidenced by the certificate of a Board of Trade surveyor, which is the proper evidence required by section 210 and the sixth schedule of the Act. It is noteworthy that Part II of the Act (to which section 210 and the sixth schedule belong) are, by section 263 (3), made expressly applicable to fishing boats as respects Scotland. On the other hand, section 371, to which some reference was made by counsel for the petitioner, occurs in a part of the Act which is not applicable to Scotland unless where expressly mentioned (section 372). But, apart from the mere question of how the deduction is to be proved, the warrant for making it is to be found in section 503 itself, which provides, by (2) (*a*), that "the tonnage of a steamship shall be her gross tonnage without deduction on account of engine-room . . . provided that there shall not be included in such tonnage any space occupied by seamen or apprentices, and appropriated to their use, which is certified under the regulation scheduled to this Act with regard thereto."

I am therefore of opinion that we should repel the answers, and should grant that part of the prayer of the petition which asks us to limit the liability of the petitioner in respect of the loss and damage there mentioned, to the sum of £475, 2s. 8d., and *quoad ultra*, if necessary, continue the petition.

LORD LOW—I have had an opportunity of reading the opinion which has just been delivered by Lord Stormonth Darling, and it seems to me to cover the ground so completely that I do not think I can usefully add anything more. But I may say that having heard the exposition of the law given by Lord Kyllachy I concur with every word which he has said.

LORD JUSTICE-CLERK—That is my position also.

The Court limited the liability of the petitioner to the sum of £475, 2s. 8d.

The petitioner moved the Court to find the respondent liable to him in such part of the expenses of the petition as were attributable to the respondents having unsuccessfully opposed his claim to limitation of liability. He admitted his liability for the other expenses of the petition.

The respondent contended that the petitioner was bound to pay the whole expenses of proceedings caused by a collision due to the fault of those for whom the petitioner was responsible—*Carron Company* v. *Cayzer, Irvine, & Company, &c.*, November 3, 1885, 13 R. 114, 23 S.L.R. 81.

LORD JUSTICE-CLERK—I have no doubt that in a case of this kind the petitioner, who is seeking to get the benefit of the limitation of liability provided by the Act, should bear all reasonable expenses incurred for that purpose. But this is a different matter. The respondent here appeared for the purpose of showing that the petitioner was not entitled to the benefit of the limitation, and I think he should bear the expense thereby incurred.

LORD KYLLACHY, LORD STORMONTH DARLING, and LORD LOW concurred.

The Court pronounced this interlocutor—

"Find the petitioner liable in the expenses of this process, except such expenses as have been caused by the respondent's contention that the petitioner was not entitled to proceed under the petition: Find the respondent liable to the petitioner in said last-mentioned expenses."

Counsel for Petitioner — Aitken, K.C. —Spens. Agent—F. J. Martin, W.S.

Counsel for Respondent—Orr, K.C.—J. D. Millar. Agents—Inglis, Orr, & Bruce, W.S.

Wednesday, March 7.

SECOND DIVISION.

[Lord Johnston, Ordinary.

AIRDRIE, COATBRIDGE, AND DISTRICT WATER TRUSTEES *v.* FLANAGAN.

Water—Water Rates—Supply at Meter Rate or at Domestic Water Rate—Dwelling-House—Private Dwelling-House—Airdrie and Coatbridge Waterworks Act 1846 (9 *and* 10 *Vict. cap. cclxxxviii*), *sec.* 52—*Airdrie and Coatbridge Waterworks Amendment Act* 1892 (55 *and* 56 *Vict. cap. cxvii*), *sec.* 46—*Airdrie, Coatbridge, and District Water Trust Act* 1900 (63 *and* 64 *Vict. cap. xcviii*), *sec.* 42.

A public-house which had no sleeping accommodation used water mainly for domestic purposes, *i.e.*, sanitary, cleaning, and cooking, and only to a very limited extent for trade purposes, *i.e.*, the washing of casks and bottles and other trade utensils. The available supply of water of the District Water Trustees was more than was required for domestic and ordinary purposes, and when that was so it was provided that the trustees "shall, if so required, contract" for a supply to "public baths, wash-houses, works, manufactories, railways, or other premises" at a meter rate and upon terms to be agreed upon or to be fixed by the Sheriff.

Held that under the District Water Acts the occupier of the public-house was entitled to a supply of water at meter rates, and that the Water Trustees were not entitled to charge their general domestic water rate.

Opinions (*per* Lord Kyllachy and Lord Low—*doubting* Lord Stormonth Darling and the Lord Justice-Clerk) that the public-house was not a "private dwelling-house."

Observations (*per* Lord Kyllachy) on the general scheme of the statutes.

By section 52 of the Airdrie and Coatbridge Waterworks Act 1846 (9 and 10 Vict. cap. cclxxxviii) it is provided — "And be it enacted, that the company shall, when required by the owner or occupier, furnish to every private dwelling-house or part of a dwelling-house in any street within the foresaid district and within one hundred yards of which any pipe of the company shall be laid, a sufficient supply of water for the domestic uses of every such dwelling-house and occupier thereof, at a rate not exceeding ten per centum of the yearly rent or yearly value of such dwelling-house or part of a dwelling-house supplied with water by the company; . . . provided also that a supply of water for domestic purposes shall not include a supply of water for horses or cattle, or for washing carriages, or for any trade or business whatsoever, and which charge for water supplied shall be over and above the rent hereinafter provided to be paid for the service pipe