lants do foul these burns or courses of running water, which come also clearly within the definition of "streams" in the Act of 1876, and for the present hearing it must be taken that they did not bring themselves within any of the exceptions or entitle themselves to any of the excuses which are set forth in the Act. There is a point reserved upon that with which the judgment of this House will have nothing to do. Of course that point reserved is still reserved. But what the appellants say is this—Permit us to prove that these burns are sewers, and if we can prove that they are sewers, surely it cannot be an offence to pour sewage matter into the sewers. That is merely asking leave to prove that they have with or without the contribution of others committed in an aggravated degree the very offence with which they are charged. The object of the Act is to prevent streams being turned into sewers, and this is what they propose to do and have done.

It is very likely indeed that these burns have been made so dirty that they are in fact such as commonly would be called sewers. I really do not know whether that be so or not, but this I do know upon the record here, that the appellants have done what is forbidden by the Act of Parliament and have not brought themselves within any of the exceptions or excuses which are laid down and provided in the Act.

Reference has been made to several cases, notably to *Gaunt's* case. I think *Gaunt's* case, so far as I can see, has been misunderstood, but if *Gaunt's* case or any other case expresses any opinion inconsistent with the view which I have ventured to express, I for one should wholly decline to be bound by it.

I therefore move your Lordships that this appeal be dismissed with costs.

EARL OF HALSBURY—I am entirely of the same opinion, but I wish to add that *Gaunt's* case appears to me to have been perfectly rightly decided, and the argument founded upon it was, I think, founded upon an entire misapprehension of what that case decided. Otherwise I entirely concur with what the Lord Chancellor has said. I think this case was hopelessly unarguable.

LORD JAMES OF HEREFORD—I concur.

LORD ATKINSON—I concur.

LORD COLLINS—I concur.

LORD SHAW—I agree.

Their Lordships dismissed the appeals with expenses.

Counsel for the Petitioners (Respondents in the House of Lords)—Wilson, K.C.—Hon. Wm. Watson. Agents—Ross, Smith, & Dykes, S.S.C., Edinburgh—Grahames, Currey, & Spens, Westminster.

Counsel for the Respondents in the Petition (Appellants)—Cripps, K.C.—Horne. Agents—Drummond & Reid, W.S., Edinburgh (for Airdrie)—Laing & Motherwell, W.S., Edinburgh (for Coatbridge)—John Kennedy, W.S., Westminster.

COURT OF SESSION.

Thursday, March 17.

SECOND DIVISION.

[Lord Johnston, Ordinary.

THE ADMIRALTY *v.* THE ABERDEEN STEAM TRAWLING AND FISHING COMPANY, LIMITED.

Shipping Law — Damages — Measure of Damages—Collision—Cost of Repairs.

A naval vessel, injured by collision with a steam trawler in the North Sea, proceeded to the Admiralty Dockyard at Chatham and was there repaired. In an action brought by the Admiralty against the owners of the trawler, it was found that the collision was due solely to the fault of the trawler. *Held,* in assessing the damages, that the expenses of transporting, docking, and undocking the vessel, and the charge for the use of the dock, must be calculated in accordance with the ordinary charges therefor prevailing in public and private docks, and irrespective of any special circumstances rendering higher charges necessary in the dockyard where the repairs were actually carried out.

The Commissioners of the Admiralty raised an action against the Aberdeen Steam Trawling and Fishing Company, Limited, concluding for the sum of £1356, 11s. 10d., being the total cost of repairs, including charges for the use of dry dock, executed upon H.M.S. "Topaze" as the result of a collision between that vessel and the defenders' steam trawler "Stratherrick." It was held that the collision was due solely to the fault of the "Stratherrick."

The collision occurred on 25th March 1908 in the North Sea, off the mouth of the Moray Firth. The "Topaze" although damaged was able to steam to Chatham Dockyard, where she was laid up for repairs. The actual cost of repairs was £348, 2s. 10d. In addition, however, the pursuers claimed, *inter alia*, (1) the sum of £188, 14s. 10d. for transporting, docking, and undocking the ship at Chatham; (2) the sum of £180, 18s. 9d. for coating the bottom of the "Topaze"; and (3) the sum of £620 as a charge for the use of the dock at the rate of £20 per day. The defenders objected to these three charges, but subsequently abandoned their objection to the second item, and they led evidence to show that if the repairs had been carried out in a private or public yard the charges under the first and third heads would have been considerably lower.

On 28th January 1909 the Lord Ordinary (JOHNSTON) pronounced this interlocutor—"Decerns against the defenders for payment to the pursuers of the sum of £1117, 15s. 5d. sterling, with interest thereon as concluded for in the summons: Finds the pursuers entitled to expenses," &c.

Opinion.—[*After finding the "Strather-*

rick" alone to blame for the collision, his Lordship proceeded]—"It remains to ascertain what that damage amounts to. The total sum which the Admiralty claim is £1348, 1s. 5d., per the statement No. 18 of process, being a few pounds less than the sum sued for. The 'Topaze' though damaged was able to steam from the place of collision to Chatham dockyard, and was there laid up for repairs. The actual cost of the repairs as done by the Admiralty dockyard workmen only amounted to the two sums of £56, 3s. 8d. and £291, 19s. 2d., or £348, 2s. 10d. in all, and to this the defenders do not object *per se*.

"What they do object to is—

"1st. The charge for transporting, docking, and undocking the ship, £188, 14s. 10d. This charge had nothing to do with the cost of steaming from the Moray Firth to the Medway, but was entirely occasioned by the time and labour involved in taking the 'Topaze' from the Medway into the graving dock, laying her up there, and taking her out again. From local circumstances this is an unusually difficult and lengthy operation. The disposal of this objection may be postponed till I deal with the third.

"2nd. The charge for coating the bottom of the 'Topaze,' £180, 18s. 9d. The defenders say that they are not bound to pay more than the cost of recoating the parts damaged, and, moreover, that the vessel was due to be entirely recoated within a twelvemonth for her periodical survey, and that the recoating now done will obviate that necessity and last for a couple of years beyond such survey. I may dispose of this contention at once. It is proved without contradiction that the exposure to the air involved in laying up in the graving dock so deteriorates the coating composition used that recoating the whole bottom is necessary before a ship is again launched. And the claim for rebate in respect of the advantage from recoating now instead of at next survey is disposed of by the judgment in the case of the '*Bernina*,' 1886, 6 Mar. Law Cases, new series, 65. I adopt the judgment of Sir James Hannen, who states very clearly the reason why no such rebate can be given.

"3rd. The charge for use of the dock, 31 days at £20 a day=£620. The defenders object to the length of time occupied. They say that by any but Government employees much less time would have been taken, and that the work done may have been very good and thorough, but that it was unduly leisurely. This contention is I think disposed of by consideration of the very exceptional lines of the prow of the 'Topaze,' as shown on No. 45 of process, and of the nature of the damage done to her stem. But the defenders maintain further that the 'Topaze' might have been docked in various public and private graving docks much nearer the scene of the collision, and could then have been repaired by private firms, for dock charges very materially less than those made by the Admiralty, and evidence was given both as to Leith, Hull, and Liverpool. It is conceded I think on the one side that £20 a-day is no sufficient return on the capital sunk by the Admiralty in such a dock as the one which the 'Topaze' occupied, and on the other hand that much lower charges are made for suitable accommodation at all the places which I have mentioned and probably at others. But then these docks, whether public or private, avowedly charge sums which make no adequate return on the docks themselves, to attract repairing work with all that is consequential to their port or to their particular yard. It is in evidence that the balance is readjusted by the shipowner having no hold over the cost of repairs, which cannot be contracted for and are done by piece work. And the Admiralty maintain that their gross charge for docking and work would be found to be no greater than the corresponding *cumulo* charges at any of the ports named, their charge for repair being as much less as the charge for docking is greater than the corresponding charge elsewhere.

"This matter I must treat as a jury question. It is not capable of being reduced to accurate figures. I am prepared to sustain the explanation of the Admiralty in principle, though not to the full extent of their figures.

"On the best consideration which I can give to the subject I assess the damages at £1117, 15s. 5d., for which sum I shall decern in favour of the Lord Commissioners of the Admiralty with expenses."

The defenders reclaimed, and argued—The claim under the first head was excessive. The ship should have been docked near the scene of the collision. Repairs could have been carried out in several private yards at a much lower cost than the amount charged. The evidence went to show that about one third of the amount would have been a reasonable charge. The charge for the use of the dock was bad *in toto*. The pursuers had not proved loss of accommodation through other vessels being prevented from using the dock, nor any loss of profit directly attributable to the defenders' fault. In any case the rate was excessive.

Argued for the pursuers — The charge under the first head was reasonable. Nothing was included for the expense of getting the ship from the scene of the collision to the dockyard. The charges for the use of the dock were what would have been made to non-naval vessels. It was true that no other dock had to be hired, but the ordinary work of the yard was hindered. It might be that this particular charge would have been lower in a private yard, but taking dockyards generally, it had not been proved exorbitant. Taken as a whole, the claim was reasonable, and in the aggregate it would probably have been the same had the work been completed elsewhere though perhaps differently compiled.

At advising—

LORD JUSTICE-CLERK—Upon the question of damages the amount for work

done on the ship is ascertained at £348, 2s. 10d. The charge for transporting, docking, and undocking is £188, 14s. 10d. I do not think that this charge can be sustained in full. It is said that from local circumstances this is an unusually difficult and lengthy operation. The Lord Ordinary in his note where he mentions the matter states that he postpones consideration of it, but I do not find that he has remembered to deal with it. It appears to me that what the Admiralty are entitled to under this head is what may be reasonably held to be the cost, under ordinary circumstances, of taking such a vessel into dock, and that they are not entitled to charge for expenses caused by difficulties peculiar to their own dock where they choose to place their vessel for repairs. It is only possible to deal with such a matter in a jury manner, and I think one-half of the amount claimed is sufficient to allow under this head.

The charge of £180, 18s. 9d. for recoating the bottom we were told at the debate was now no longer contested.

Lastly, £620 is charged for the use of the dock at £20 a-day, which is what the Admiralty charge usually to non-naval vessels when they allow them into the Government dock. This is not, as I think, a sound contention. The part of the damages applicable to the expense of occupying a dry-dock must be estimated by consideration of the cost for which accommodation can be obtained by the owner of a vessel desirous to have it docked at reasonable charges. Now there is evidence which seems satisfactory that such accommodation can be obtained in many docks at £7, £10, £12, or £15 per day. And I do not think that the effect of this fact can be taken away by saying, as the Lord Ordinary does, that these charges are made small because the dock-owners desire to attract shipowners to have their repairing work done in their docks. That does not seem to me to make any difference. If docks can be got cheap, a defender who has to pay for docking of a ship injured by his fault is entitled to have it done at such charges as are usual in the docking of vessels for repairs. Therefore I am in favour of modifying the charge, and think that £12 per day is a reasonable sum to allow, which will amount to £372.

The whole damages will thus amount to £995, 9s., for which I would move that your Lordships grant decree.

LORD LOW, LORD ARDWALL, and LORD DUNDAS concurred.

The Court pronounced this interlocutor—

". . . Recal the interlocutor reclaimed against, and decern against the defenders for payment to the pursuers of the sum of £995, 9s. with interest thereon as craved. . . ."

Counsel for the Pursuers (Respondents)—Lord Advocate (Ure, K.C.)—Hunter, K.C.—Pitman. Agent—Thomas Carmichael, S.S.C.

Counsel for the Defenders (Reclaimers)—Dean of Faculty (Dickson, K.C.)—Murray, K.C.—Lippe. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Thursday, March 17.

FIRST DIVISION.

[Sheriff of Lanarkshire.

STEVENSON AND OTHERS *v.* SHARP.

Sheriff—Appeal—Competency—Summary Cause—Value of Cause—Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, cap.* 51), *secs.* 3 (*i*) *and* 8.

The Sheriff Courts (Scotland) Act 1907 enacts—sec. 3 (*i*)—"'Summary cause' includes (1) actions . . . for payment of money exceeding twenty pounds and not exceeding fifty pounds, exclusive of interest and expenses . . ." Sec. 8—". . . In a summary cause if the Sheriff on appeal is of opinion that important questions of law are involved, he shall state the same in his interlocutor, and he may then, or within seven days from the date of his interlocutor, grant leave to appeal to a Division of the Court of Session on such questions of law, but otherwise the judgment of the Sheriff shall be final." Sec. 28—"Subject to the provisions of this Act, it shall be competent to appeal to the Court of Session against a judgment of a Sheriff-Substitute, or of a Sheriff, but that only if the value of the cause exceeds fifty pounds, and the interlocutor appealed against is a final judgment . . ."

In a Sheriff Court action for payment of two sums of £26, 12s. *in cumulo*, being the interest due at Martinmas 1908 on two bonds and dispositions in security, payment of said interest having, as the pursuer averred, been undertaken by the defender in terms of a letter of obligation granted by him to pursuer's agents, the Sheriff-Substitute assoilzied the defender. On 3rd July 1909 the Sheriff recalled that interlocutor and dismissed the action, and on 4th August 1909 granted the pursuer leave to appeal. In the Court of Session the defender objected to the competency of the appeal on the ground that the action was a summary cause and that the Sheriff had not stated any questions of law for appeal as required by section 8. *Held* that as it was apparent on the face of the initial writ that the action inferred a continuing obligation of greater value than £50, the cause was not a summary one in the sense of section 8, and objection *repelled*.

Duke of Argyll v. *Muir*, 1910 S.C. 96, *supra* p. 67, *distinguished*.

The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), section 8, enacts—"In a summary cause the Sheriff shall order such procedure as he thinks requisite, and (with-