He disposed of the application on its merits and refused it. There appears to be no ground for holding that the Sheriff-Substitute went wrong in law, and in my opinion the question should be answered in the affirmative.

LORD KINNEAR—I quite assent to Lord Johnston's suggestion that we should find in the terms which he has proposed, introducing the words "*per se*" into the finding although it is not in the question. That is exactly in accordance with the view expressed by myself and by Lord Mackenzie as our understanding of the question, but it will certainly be more convenient and desirable that it should be clearly expressed.

I cannot see any reason why the expenses should not follow the appeal in the ordinary way.

The LORD PRESIDENT was not present.

The Court pronounced this interlocutor—

"Find in answer to the question of law in the case that the Sheriff-Substitute as arbitrator was right in refusing to consider the general increase of 9d. a-day in the miners' wages between the date of the agreement (19th January 1912) and the date of the application to review as *per se* entitling the claimant to increase in compensation: Dismiss the appeal, and decern."

Counsel for Appellant — Watt, K.C. — MacRobert. Agent—D. R. Tullo, S.S.C.

Counsel for Respondents—Hon. W. Watson — Strain. Agents — Wallace & Begg, W.S.

Saturday, July 12.

FIRST DIVISION.

[Lord Skerrington, Ordinary.

M'ARA *v.* EDINBURGH MAGISTRATES AND OTHERS.

Burgh — Magistrates — Powers — Power to Issue Proclamations Prohibiting the Holding of Meetings in Streets—Act 1606, *c.* 17.

In an action at the instance of a street orator against the magistrates of a burgh who had issued a proclamation proceeding upon the preamble that complaints had been made of the annoyance, disorder, and obstruction caused by meetings, and prohibiting under penalty from holding such meetings without a licence, the pursuer, who had been arrested for contravening the terms of the proclamation, craved declarator that the proclamation was illegal inasmuch as (1) the statute on which it was based, viz., the Act 1606, c. 17, entituled "An Act for staying of unlawful convocations within burgh and for assisting of the magistrates in the execution of their offices," was in desuetude, and (2) the defenders had no power at common law to prohibit the meetings in question.

Held that the magistrates had no power at common law or under any statute to issue the proclamation complained of, and that, accordingly, the pursuer was not bound to obey it.

Observed per the Lord President—The magistrates as the proper custodiers of the streets have an absolute right, if they are of opinion that what is going on in the streets is likely to interfere with the paramount right of passage, or to lead to a breach of the peace, to move on, *via facti*, by means of the police, the people who are causing the obstruction.

Per the Lord President—"I wish most distinctly to state it as my opinion that the primary and overruling object for which streets exist is passage. The streets are public, but they are public for passage, and there is no such thing as a right in the public to hold meetings as such in the streets."

Statute — Desuetude — Act 1606, *c.* 17, *entituled an Act for Staying of Unlawful Conventions within Burgh and for Assisting of the Magistrates in the Execution of their Offices.*

Held that the Act 1606, c. 17, is in desuetude.

Deakin v. *Milne*, October 27, 1882, 10 R. (J.) 22, 20 S.L.R. 30, *commented on.*

Observations (*per* the Lord President) as to how far a statute might be partly in desuetude.

On 21st September 1912 John M'Ara, 3 Guthrie Street, Edinburgh, *pursuer*, brought an action against the Lord Provost and Magistrates of the city of Edinburgh and others, *defenders*, in which he sought declarator (1) that the defenders had no power to issue, and that he (the pursuer) was not bound to obey, a proclamation, dated 19th July 1912, prohibiting him from holding meetings on the open space or area lying to the south and east of the Royal Scottish Academy at the Mound, within the city of Edinburgh, without a licence from the Magistrates, and intimating that all persons contravening such proclamation were liable to the penalties set forth in the Summary Jurisdiction (Scotland) Act 1908 (8 Edw. VII, cap. 65); and (2) that the defenders were not entitled to issue such licences. There were also conclusions for interdict against the defenders issuing such proclamations or licences, and for damages for alleged illegal arrest.

The following narrative is taken from the opinion (*infra*) of the Lord Ordinary (SKERRINGTON):—"The pursuer is a cork-cutter by trade and resides in Edinburgh. He describes himself as a politician, reformer, and street preacher, and as a person who has held meetings for many years in Edinburgh with his fellow-citizens for the discussion of social, political, and religious questions. The

leading defenders are the gentlemen who were the Lord Provost and the Magistrates of the city of Edinburgh in July 1912, and who are therefore responsible for the proclamation of 19th July of which the pursuer complains. The defenders allege, however, that one of them was not a magistrate until 30th July 1912. The Lord Provost, Magistrates, and Council, in other words the Corporation of the City of Edinburgh, are also cited as defenders. Both sets of defenders have lodged defences, but they were represented by the same counsel. The pursuer avers, and the defenders admit, that for some years he and a number of other persons, professing various opinions, religious, social, and political, have been in the habit of addressing meetings in certain open spaces within the city of Edinburgh and that these meetings have not been interfered with by the Magistrates. One of these spaces is the Mound, and particularly the streets or roads lying to the south and east of the buildings occupied by the Royal Scottish Academy Galleries. The defenders allege that the Mound is within the extended royalty of the burgh, and that these roadways were taken over by the Lord Provost, Magistrates, and Council in the year 1898. If so, they are vested in the Corporation for the purposes of the Police Acts—(Edinburgh Municipal and Police Act 1879 (42 and 43 Vict. cap. cxxxii), sec. 112; Edinburgh Municipal and Police (Amendment) Act 1891 (54 and 55 Vict. cap. cxxxvi), sec. 32). The owners of the *solum* have made no complaint as to these meetings. The pursuer alleges that he holds what are known as advanced political opinions, that these opinions are obnoxious to the Magistrates, and that the latter, having no power to suppress him under the Police Acts, issued the said proclamation, not because his meetings caused annoyance, disorder, or obstruction, but because they objected to his opinions. These latter allegations are, in my opinion, irrelevant, and I shall assume that the Magistrates have throughout done what they believed to be their duty. They explain that they were informed 'by the Chief-Constable of many complaints by citizens and others with regard to meetings at the Mound, and were also informed by him that at some meetings coarse and offensive language was used. They were also informed that the crowds which gathered obstructed the free passage of citizens in this locality, and that the remarks of some of the speakers were calculated to produce breaches of the peace. It was after considering this information that the Magistrates resolved to issue the proclamation.' They further aver—'The preamble of said proclamation is true, and the pursuer himself was largely responsible for the complaints to the police therein referred to. On several Sundays immediately preceding the issue of the proclamation the pursuer had addressed meetings at the Mound, and his speeches consisted of stringing together a number of very coarse, abusive, and obscene remarks, after which he made collections of money. It was necessary, in the interests of public order, that said meetings should be controlled by the Magistrates by means of licences.' The proclamation of which the pursuer complains, proceeds on the preamble (1) That complaints had been made 'of the annoyance, disorder, and obstruction caused by various meetings, congregations, or assemblages of persons being habitually held on the public footpaths and roadways' at the place in question; (2) That although requested by the police to remove, the persons responsible for these meetings, etc., have refused to do so; and (3) That the Magistrates consider that in the interests of public order such meetings, etc., should be prohibited, unless and until a licence has been obtained from the Magistrates for holding the same. The operative part of the proclamation is as follows:—'Therefore the Magistrates do hereby order that persons shall not assemble, or congregate, or hold meetings on any part of the footpaths or roadways within the areas above described, or in the neighbourhood thereof, from and after the date of this proclamation, unless they have previously applied for and obtained the licence of the said Magistrates thereto. All persons contravening this order are liable to the penalties set forth in the Summary Jurisdiction (Scotland) Act 1908.' The proclamation is dated 19th July 1912, and is signed by the Acting Chief Magistrate and the Town Clerk, in name and by authority of the Magistrates. Upon the same date the Magistrates agreed upon a form of licence for persons desiring to hold meetings on the public roadways (excluding footpaths), at the foot of the Mound. The licence bears to be granted in virtue of the powers conferred upon the Magistrates by 'An Act for Staying of Unlawful Conventions within Burgh, and for Assisting of the Magistrates in the Execution of their Offices,' 1606, cap. 17. This form of licence, which is quoted in the condescendence, and which contains four conditions, was abandoned for a simpler form on 25th July 1912, but the later form founds upon the same Act. The pursuer did not apply for a licence. On the evening of Sunday, 21st July, he took up his customary position in the open space to the east of the Galleries on the Mound. He was then arrested by the police, and incarcerated on a charge of breach of the said proclamation, but was subsequently liberated on bail. On Monday, 22nd July, the pursuer was charged in the City Police Court on a complaint under the Summary Jurisdiction (Scotland) Act 1908, which charged him with having held a meeting without having obtained from the Magistrates a licence authorising him to do so, contrary to the proclamation. The case was remitted to the Burgh Court, and on Wednesday, 24th July, the pursuer pleaded not guilty to a new complaint in that Court which charged him not only with breach of the proclamation but also with breach of the peace. The Magistrate con-

victed the pursuer of breach of the proclamation, but did not convict him of breach of the peace. The pursuer was admonished and dismissed. The pursuer reserves his right to bring a suspension of said conviction, and his claim to reparation in respect thereof. The conclusions of the summons are lengthy, and somewhat involved, but they may be summarised as follows:—(1) The pursuer asks for declarator that the Magistrates had and have no warrant or authority to issue, and that he was not and is not now bound to obey, the proclamation. (2) He asks for declarator that the Magistrates had and have no warrant or authority to grant or issue, and that he is not bound to accept, a licence authorising him to hold meetings, subject to the conditions set forth in the form of licence originally adopted by the Magistrates. The pursuer asks (3) and (4) for interdict against the issue of such proclamations and licences; and (5) he claims £250 in name of damages from the Magistrates conjunctly and severally, or severally, or alternatively from the Corporation."

The pursuer pleaded, *inter alia*—"1. The Statute 1606, c. 17, having been superseded by contrary usage, and being now in desuetude, the pursuer is entitled to decree of declarator and interdict as concluded for. 2. The said proclamation being without warrant and *ultra vires* the pursuer is entitled to decree of declarator and interdict as concluded for. 3. *Separatim*, the pursuer having by constitutional law and usage the right in common with His Majesty's lieges to converse with and to fellow citizens on matters of public interest on the streets and open spaces of the city as long as private right and public order are observed, the said proclamation and licence are *ultra vires* and illegal and the pursuer is entitled to interdict and declarator."

The defenders, *inter alia*, pleaded—"1. The action is incompetent and excluded in respect of the statutory method of review provided by the Summary Jurisdiction (Scotland) Act 1908. 2. No title to sue. 4. In respect that the pursuer has no right at common law or under statute to use the streets, and in particular those at the Mound or in the neighbourhood thereof, for the purpose of addressing meetings, the action should be dismissed. 5. The Statute 1606, c. 17, not having fallen into desuetude, nor having been superseded as alleged, these defenders should be assoilzied. 6. The said proclamation being legal and *intra vires* of these defenders, they are entitled to decree of absolvitor. 7. The said form of licence, settled on 19th July 1912, and the form of licence settled on 25th July, being legal and *intra vires* of these defenders, these defenders should be assoilzied."

On 29th January 1913 the Lord Ordinary (SKERRINGTON) pronounced the following interlocutor:—"Repels the second plea-in-law stated for both sets of defenders, and also the first plea-in-law stated for them so far as regards the conclusions of the summons for declarator and interdict: Finds and declares that the Magistrates of the City of Edinburgh were not empowered by the common law or by any statute to issue the proclamation mentioned in the summons, and that the pursuer was not at 19th or 21st July 1912, and is not now, bound to obey said proclamation, and decerns: *Quoad ultra* finds it unnecessary to pronounce any further declarator or to grant interdict; dismisses the conclusions to that effect, and decerns . . . Further, under reservation of the pleas of the defenders, the said Magistrates of the City of Edinburgh, as to the competency and relevancy of the pursuer's claim of damages against them, allows him within eight days to lodge the issue or issues which he proposes . . ."

Opinion.—[*After the narrative of facts ut supra*]—"The pursuer has taken no steps to set aside the judgment of the Magistrate convicting him of a breach of the said proclamation. His counsel explained that his client wished, if necessary, to obtain a judgment of the House of Lords as to the legality of the proclamation. Further, there is a decision of the High Court of Justiciary which presents a difficulty in the way of the pursuer, and he thought that he would have a better prospect of success in a civil court. The defenders' first plea-in-law is as follows:—'The action is incompetent, and excluded, in respect of the statutory method of review provided by the Summary Jurisdiction (Scotland) Act 1908.' The defenders' counsel explained that this plea was intended to apply only to the conclusion for damages, and accordingly it must be repelled in so far as regards the conclusions for declarator and interdict.

"The defenders' second plea-in-law is 'No title to sue.' The Magistrates of Edinburgh have issued a proclamation threatening their fellow-citizens with penalties, but they now wish to avoid a judgment as to its legality. I do not understand this policy on their part, or why the pursuer should not have a title to challenge the legality of a proclamation which attempts to stop a practice which he has pursued for years without objection upon the part of the civic authorities. The defenders' counsel argued that the only remedy open to a citizen who objected to the proclamation was to disobey it and to plead the illegality in defence to a prosecution. This argument seems to me contrary to good sense and to good order. I do not see why, in order to obtain a judgment upon a purely legal question, a citizen must expose himself to arrest and imprisonment, or why the Magistrates must be exposed to claims of damages. As regards this matter, the observations of Lord Robertson in *Rossi* v. *Magistrates of Edinburyh*, 1904, 7 F. (H.L.) 85, pp. 89-90, are in point. The defenders' counsel admitted that it was not necessarily illegal to hold a meeting on a highway (*Burden* v. *Rigler*, 1911, 1 K.B. 337), but he argued that no one can have an absolute legal right to hold a meeting on a road or street. If the pursuer had claimed such a right I should have sustained his title to sue, but I should have assoilzied the

defenders upon the ground that no such right exists. In his third plea-in-law the pursuer claims a right to converse with his 'fellow-citizens on matters of public interest on the streets and open spaces of the city as long as private rights and public order are observed.' If he had asked for a declarator of such a right I should have sustained his title to sue, but I should have dismissed the conclusion as too vague, and upon the ground that it was impossible and incompetent for the Court of Session to try to regulate the right of the citizens of Edinburgh to the use of their streets. The matter is one for the local authorities, and all that this Court can do is to protect the citizens against illegal actings on the part of their rulers. I construe the pursuer's first conclusion as a challenge of the legality of the proclamation though it contains a reservation of the defenders' power 'to regulate traffic and suppress disorder,' which seems to me quite unnecessary. I do not propose to follow the defenders' counsel in his able and learned argument as to the nature and extent of the right of the public to the use of a road or street. I merely say that I dissent from the view that the public have only a bare right of passage over a country highway or over the streets of a burgh. It is a question of fact whether any particular use of a road or street is reasonable, and different considerations may apply to country roads and to streets in burghs. The decision of the House of Lords in *Galbreath* v. *Armour*, 1845, 4 Bell's App. 374, does not support the argument of the defenders' counsel. I accordingly repel the plea of 'No title to sue.'

"The Magistrates maintain that their proclamation was justified by the Act 1606, c. 17. This statute and the earlier statutes dealing with the same topic are referred to or commented on in Mackenzie's Observations on the Acts of Parliament (1686), pp. 105, 169, 325-6; Kames' Statute Law of Scotland (2nd ed., 1769), *s.v.* "Mob," p. 224; Erskine's Institutes (1773), 4, 4, 29; Hume on Crimes (3rd ed., 1829), vol. i, pp. 416, 430-4, 557-8; Alison's Principles of the Criminal Law (1832), pp. 528-9. The Act 1606, c. 17, is quoted verbatim in the condescendence, and the following points may be noted in regard to it:—(1) It ratifies all former Acts 'for staying of all tumults and unlawful meetings and convocations within burgh.' According to Hume (vol. i. p. 416), what is now called 'mobbing' used to be called 'the tumultuous convocation of the lieges.' In his opinion what was struck at by these Acts was not so much sedition, as Erskine thought, but rather the crime of rioting and convocation, the objects of which are local and private rather than general (pp. 430-1 and 557-8). No doubt, however, seditious meetings fell within the purview of the Acts. The earlier statutes, which apparently are the ones referred to in the Act, are three in number, and they are summarised as follows by Lord Kames:—'Convocating of the lieges within burgh discharged, under the pain of confiscation of moveables, and the lives of the transgressors to be at the King's will, 1457-77, 1491-34. Convocations or meetings in arms within burghs, without licence from the King or magistrates, to be punished with death, 1563-83.'

"(2) The Act 1606, c. 17, makes a very remarkable 'addition' to the earlier legislation by enacting that no persons within burgh shall 'convocate or assemble themselves together on any occasion except they make due intimation of the lawful causes of their meeting to the provost and bailies of that burgh, and obtain their licence thereto, so that nothing be done or attempted by them in their said meetings which may tend to the derogation or violation of the Acts of Parliament, laws and constitutions, made for the weil and quietness of the said burghs; declaring by these presents the said unlawful meetings and the persons present thereat to be factious and seditious, and all proceedings therein to be null and of no avail, and the said persons to be punished in their bodies, goods, and gear with all rigour, conform to the laws of this realm.' This new enactment imposes upon the inhabitants of burghs a positive duty to intimate to the magistrates the purpose of any proposed meeting, and to obtain their sanction to the holding of the meeting. Failing obedience, it renders unlawful meetings of a kind which otherwise would have been lawful. Contravention of the statute is declared to be constructive sedition. According to Erskine, the words used in the statute are, 'seldom or never stretched to a capital punishment.'

"(3) After ordaining that the whole inhabitants of the burgh shall assist the magistrates to put down unlawful meetings, the Act 'ordains publication to be made hereof at the market crosses of the said burghs, that none pretend ignorance thereof.' This Act derogates, according to Mackenzie, from the general law contained in the Act 1581, c. 128, which was to the effect that the lieges should be bound to obey the Acts of the Scottish Parliament on the expiry of forty days from the publication thereof at the Market Cross of Edinburgh. On the principle *omnia præsumuntur solemniter acta* it must be assumed that the Act 1606, c. 17, was duly proclaimed in all burghs as ordered. No further or renewed publication was required by the Act in order to make it binding upon the lieges, nor is any further publication averred to have been made in Edinburgh. The Aot does not authorise or contemplate the issue of proclamations by the magistrates.

"The language of the 'addition' is very general, and may be construed so as to include all meetings within burgh, whether in the open air or within a building. Mackenzie says that it has been doubted whether keepers of conventicles within burgh may be punishable by this Act, but this doubt is founded merely upon the fact that there were later statutes, now repealed, which specially mentioned and prohibited conventicles within houses and in fields. It may, I think, be assumed that

the Act 1606, c. 17, is now in desuetude as regards meetings within private buildings, but meetings in the open air are in a different category, because they may lead to obstruction of the streets, breach of the peace, and mobbing and rioting. Further, if the Act is still in force, it may also be assumed that the punishment for contravention would now be very different from that contemplated by its authors. Authority for the proposition that Scottish statutes may fall into partial desuetude will be found in some of the opinions in the case of *Bute* v. *More*, 1870, 1 Couper 495, 9 Macph. 180. These opinions are of great weight and authority, but they were merely *obiter*, seeing that the only judgment of the Court was to the effect that a contravention of the old statutes anent the profanation of the Sabbath could not competently be tried under the Summary Procedure Act 1864. This decision was followed in the case of *Nicol* v. *M'Neill*, 1887, 14 R. (J.) 47, but both Lord Young and Lord M'Laren said that in their view it was an open question whether these statutes were or were not in desuetude.

"The question whether the Act 1606, c. 17, is still in force depends primarily upon the construction which ought to be given to the decision of the High Court of Justiciary in the case of *Deakin* v. *Milne*, 1882, 5 Couper 174, 10 R. (J.) 22. That case may be quoted as an authority for the proposition that the Act is not in desuetude, or alternatively for the proposition that the magistrates of a burgh have power at common law to issue a proclamation prohibiting a meeting, with the result that any person who disobeys is guilty of a substantive offence. I have come to the conclusion that the Judges (Lord Justice-Clerk Moncreiff, Lord Young, and Lord Craighill) did not intend to affirm either of these propositions. The facts were as follows:—In the royal burgh of Arbroath the processions of the Salvation Army had led to opposition, and an antagonistic army called the Skeleton Army had been raised. There had been street fights within the burgh, and people belonging to both armies had been brought before the magistrates and fined. The magistrates finding that the evil continued, and that the processions led to 'riotous proceedings and are likely to cause a breach of the peace,' issued a proclamation prohibiting all processions of the Salvation Army, and giving notice that persons taking part therein would 'render themselves liable to prosecution.' Certain persons who were members of the Salvation Army were charged in the Police Court with 'the crime of breaking the public peace, as also of a breach of the terms of a proclamation made and published by the Provost and Bailies of Arbroath on the 17th day of March 1882, by virtue of the powers conferred on them by the Act of Parliament passed in the reign of James the Sixth, in the year 1606, cap. 17, actors or actor, or art and part.' It was objected that a charge of breach of a proclamation was not a *nomen juris* according to the law of Scotland, and also that the Act 1606, cap. 17, was in desuetude. Thes objections were repelled, and the accused were convicted of both offences and fined. An appeal was taken upon a case stated, and one of the questions for the Court of Appeal was whether the appellants 'were properly convicted of an offence punishable by a magistrate of the burgh, in consequence of violating the provisions of the said proclamation issued in virtue of the powers conferred upon the magistrates by the said Act, James the Sixth, in the year 1606, cap. 17, or otherwise in virtue of their powers as Magistrates of Arbroath on the occasion libelled?' The High Court, without answering any of the questions, dismissed the appeal and affirmed the determination of the Inferior Judge. Counsel for the appellants argued that the Act was in desuetude, but none of the authorities bearing on this branch of the law were cited on either side. In reply counsel for the respondent argued that there was 'no authority for the contention that the Act of 1606 is in desuetude. The issuing of the proclamation and the institution of the prosecutions were quite legal, and were proper and necessary acts on the part of the magistrates. The offence is charged, and the proclamation is referred to in the complaint, more for the purpose of showing that the principal offence, viz., the breach of the peace, was committed after due warning had been given to the appellants, and so charged more as an aggravation of the first offence; and it is perfectly relevant.' Each of the Judges expressed the opinion that the proclamation was within the powers of the magistrates, but none of them made any reference to the Act of 1606. I read the opinions as meaning that in the special circumstances the Magistrates had power to prohibit a procession which was likely to cause a breach of the peace. The Lord Justice-Clerk said that the breach of the proclamation was a 'municipal offence,' but I do not think that he or the other Judges intended to affirm that disobedience to the proclamation was a substantive offence apart from breach of the peace. It is noteworthy that the present Lord Justice-Clerk, who was counsel for the respondent in the case of *Deakin*, refers to that decision in his Treatise on the Criminal Law of Scotland (1894, 3rd edition, p. 326), merely for the purpose of showing the *modus* in which a charge of breach of the peace may be made. In the case of *Hutton* v. *Main*, 1891, 19 R. (J.) 5, the present Lord Justice-Clerk referred to the case of *Deakin* in terms which indicate that in his view the case was simply one of breach of the peace. It should be noticed that the complaint in the case of *Deakin* was not for contravention of the Act of 1606, c. 17, but for breach of the proclamation. The person who framed the complaint had read the case of *Bute* v. *More*, and knew that a prosecution for contravention of the statute would be incompetent under the Summary Procedure Act, 1864.

"No other example was cited of a prosecution founded on the Act, 1606 c. 17.

Neither that Act nor the earlier statutes as to unlawful convocations are referred to in Macdonald's Criminal Law of Scotland. When one goes back to Hume, Alison, and Erskine, it is remarkable that not one of these writers makes any reference to the addition to the previous law which was effected by the Act of 1606. Hume says that the fundamental law is the Act of James II., 'which the others only reintegrate.' Though the terms of the 'addition' are correctly stated by Kames and Mackenzie, I am disposed to think that from a very early period it met the fate of legislation which is too stringent, and that it was simply disregarded. However that may be, it is, I think, certain that both at the present day, and as far back as the memory of man can carry, the offence prohibited by the Act is and was 'not only practised without being checked, but is no longer considered or dealt with in this country as an offence against the law.' I quote from the opinion of the Lord Justice-General (Inglis) in *Bute* v. *More*. It is not the practice for persons who intend to hold an open-air meeting within burgh to intimate the purpose of their meeting to the magistrates and to obtain their licence. In the case of *Hutton* v. *Main*, already referred to, the Lord Justice-Clerk said—'Street preaching is a familiar thing. Respectable persons gather, sing in order to attract the attention of those near, and thereafter preach to them.' Other meetings in the open air within burgh are equally free and informal. No example was adduced of a case in which the Magistrates of Edinburgh, or of any other burgh, had either given or withheld a licence for a meeting. The defenders' counsel argued that as licences need not be in writing, it must be assumed that the magistrates impliedly licensed all the meetings which have been held within burgh during the last century. This argument overlooks the whole end and object of the 'addition' to the Act of 1606, which was that previous intimation should be made to the magistrates in order that they might consider and decide whether a particular meeting ought to be sanctioned. The defenders' counsel founded upon the Statute Law Revision (Scotland) Act 1906 (6 Edw. VII., cap. 38), which schedules for repeal the three earlier statutes as to unlawful convocations, but does not schedule the Act 1606, c. 17. No inference one way or the other can be drawn from this omission. The object of the Act was to prepare the way for a revised edition of the statutes and not to solve legal difficulties or to effect any substantive change in the law. Accordingly the Act repealed expressly and specifically certain enactments which had ceased to be in force or had become unnecessary. In view of the case of *Deakin* it was for the Court and not for the Statute Law Revision Act to determine whether the Act of 1606 was or was not in desuetude.

"Apart from the Act of 1606, the Magistrates have no power to institute a licensing system in order to prevent 'annoyance disorder, and obstruction' or even breach of the peace, consequent upon the holding of meetings upon the Mound. Any person convicted of causing an obstruction on a foot-pavement or thoroughfare, or of conduct which if continued would produce reasonable apprehension of 'the breaking up of the social peace,' may be fined or ordered to find good security for his future good behaviour—*Ferguson* v. *Carnochan*, 1889, 16 R. (J.) 93; *Wise* v. *Dunning*, 1902, 1 K.B. 167; Act of 1879, section 246 (19) and (20), as amended by Act of 1891, section 80 (11); Summary Jurisdiction (Scotland) Act 1908, sections 43 and 50. The proclamation if effectual would dispense with the necessity of both trial and conviction, and would subject a citizen to disabilities merely because the Magistrates in their private room had come to the conclusion that his conduct was calculated to produce obstruction or breach of the peace. I can figure nothing more arbitrary or unconstitutional. For the purpose of preserving the public peace, the Magistrates of Edinburgh have, in addition to the powers pertaining to magistrates, the powers of justices of the peace and of sheriffs — *Wright* v. *Bell*, 1905, 8 F. 291, pp. 310, 314. I assume that if they thought it necessary they might lawfully issue a proclamation prohibiting the holding of any meetings which in their opinion were likely to lead to a breach of the peace, and that they might warn the citizens that persons who disobeyed would be liable to prosecution for obstruction and breach of the peace. But they could not lawfully threaten the citizens with penalties for contravening their proclamation. I asked the defenders' counsel to explain what were the penalties referred to in the proclamation. He pointed to section 27 of the Summary Jurisdiction (Scotland) Act, 1908 (8 Edw. VII, cap. 65), which enacts that 'where any court has power to take cognisance of offences the penalties attached to which are not defined, the punishment for such offences shall be regulated by that applicable to common law offences in such court.' It would follow that the punishment for breach of the proclamation if prosecuted in the Police or the Burgh Court would be a fine not exceeding £10, and failing payment imprisonment not exceeding 60 days (sec. 7); and if prosecuted in the Sheriff Court, a fine not exceeding £25, and failing payment imprisonment not exceeding three months, or imprisonment for the same period without the option of a fine (sec. 11). These penalties are much more severe than those imposed by the Act of 1879 for municipal offences of a similar character. By sections 242 and 243 of the Act of 1879 the Magistrates have power to regulate the traffic in the streets; to prescribe the route for public processions, etc., and every person guilty of a breach of such order or regulation is liable to a penalty not exceeding forty shillings. The same penalty is imposed for obstructing a foot-pavement or thoroughfare (section 246 (19) and (20); Act of 1891 section 80 (11)). Again, the Magistrates and Town Council

have power with the approval of the Sheriff to make bye-laws, *inter alia*, 'for preventing nuisances and annoyances in any street or court' (Act of 1879, sections 308 and 309 (1)) under the same penalty. Theproclamation was a usurpation by the Magistrates of the right which belonged to the citizens of Edinburgh as represented by the Lord Provost, Magistrates, and Councillors to regulate the use of the streets so as to benefit so far as possible the community as a whole. At common law 'in matters of police, or of common concernment to the community, the Magistrates and Town Council must concur, as the full representatives of the community. In this capacity they make bye-laws not repugnant to the laws of the realm or set of the borough' (Ersk. 1-4-22). As I have already mentioned, the Corporation of Edinburgh has not only delegated, with consent of Parliament, certain of its powers to the Magistrates, but has also subjected its common law power of making bye-laws to statutory regulation. It would be a fitting question for the consideration of the Town Council whether those citizens who derive edification, instruction, or amusement from street preachers ought to be allowed to gratify this taste on the Mound, although other members of the community may object to the inevitable noise and crowd and to occasional coarse language. Even if the judgment of the Town Council were adverse the pursuer would be entitled to be heard by his counsel or agent before the Sheriff allowed any bye-laws prohibiting meetings on the Mound. The proclamation rides roughshod over these rights and liberties.

"I shall find and declare that the Magistrates were not empowered by the common law or by any statute to issue the proclamation mentioned in the summons, and that the pursuer is not bound to obey it. It is unnecessary to pronounce any further declarator or to grant interdict. As regards the conclusion for damages, the pursuer has stated no relevant case against the Corporation, but he was entitled and bound to call them as parties interested in the other conclusions. I shall repel the first and second pleas stated for the Corporation. I shall sustain their third plea (irrelevancy) so far as regards the conclusion for damages, and to that extent I shall dismiss the action so far as directed against the Corporation. As regards the Magistrates, I shall allow the pursuer to lodge an issue without pronouncing any decision as to the competency or relevancy of his claim of damages. The defenders' counsel cited the case of *Gilchrist* v. *Walker*, 1 D. 37, but *Wood* v. *North British Railway Company*, 1 F. 562, *Wilson* v. *Bennett*, 6 F. 269, and *M'Creadie*, 1907 S.C. 1176, seem more in point."

The defenders reclaimed, and argued—(1) The Magistrates were entitled to issue the proclamation in question—Act 1606, cap. 17—for that Act was still in force. *Esto* that an Act might be in partial desuetude and that it could not be enforced where a practice to the contrary had been established, it did not follow that it could not be enforced at particular times and in special circumstances. To render an Act obsolete by reason of desuetude it must be shown that it no longer reflected the will of the people as evidenced by open non-observance of it. That could not be said of this Act, for it was referred to by Hume in 1829 (vol. i. 430), and by Alison in 1832 (vol. i. 529), as then in force, and it was before the Court so recently as 1882—*Deakin* v. *Milne*, October 27, 1882, 10 R. (J.) 22, 20 S.L.R. 30. As to what would amount to desuetude, reference was made to the cases of *Bute* v. *More*, November 24, 1870, 9 Macph. 180, 8 S.L.R. 200; and *Nicol* v. *M'Neill*, July 13, 1887, 14 R. (J.) 47, 24 S.L.R. 654. The fact that the Act did not seem to have been appealed to in the case of indoor meetings was immaterial, for such meetings were in a different category. (2) Apart from the Act 1606, cap. 17, the defenders in their capacity as Magistrates were entitled at common law to issue the proclamation in question in virtue of their inherent right to make known the law to the people and to preserve the peace of the burgh. It was not essential that they should be able to produce statutory authority for every one of their actions so long as these were in accordance with the common law of the land. They had also a preventive jurisdiction, as, for instance, by issuing letters of lawburrows. As to the common law powers of magistrates with regard to the control of the streets, reference was made to *Threshie* v. *Magistrates of Annan*, December 11, 1845, 8 D. 276, and to the Report of the Commissioners on Municipal Corporations (1835), p. 53 *et. seq.* The *locus* in question was within the Royal Burgh of Edinburgh—Edinburgh Extension Act 1767 (7 Geo. III, cap. xxvii)—and it was well settled that the magistrates of such burghs were vested with the care of the streets for the public benefit — Bell's Prin. 660. There was no public right of holding meetings in the streets—the streets were for passage and not for meetings—*Ex parte Lewis*, (1888) L.R. 21 Q.B.D. 191 at 196-197; *Harrison* v. *Duke of Rutland*, [1893] 1 Q.B. 142, at pp. 145 and 152. The right to regulate the use of the streets implied power to issue licences and to enforce them by the imposition of penalties—*Reg.* v. *Cunninghame Graham and Burns*, 1888, 16 Cox's Crim. Cas. 420. For examples of the defenders' statutory powers reference was made to the Edinburgh Municipal and Police Act, 1879 (42 and 43 Vict. cap. cxxxii), secs. 242, 243, and to sec. 364, which expressly reserved all their common law powers.

Argued for respondent—(1) The Act 1606, cap. 17, was plainly in desuetude, for not only had it not been appealed to for some 300 years prior to *Deakin's* case (*cit.*), but it had often been breached without interference. The subsequent Act of 1795 against seditious meetings (36 Geo. III. cap. 8) showed that the Act of 1606 was in desuetude, for otherwise the later Act would not have been required. There was no reference to it in the parliamentary debates when the later Act was passed.

Esto that it was referred to in *Deakin's* case (*cit.*), it was not really founded on, for the charge there was breach of the peace and no notice was taken of it by the Judges in their opinions. In any event it was inapplicable, for it only applied to unlawful meetings—Hume on Crime, vol. i. 430. That being so, the proclamation was illegal and the penalties invalid. (2) The pursuer did not ask for a declarator of an unqualified public right of meeting in the streets, but he did maintain that the mere right of passage was not the full measure of the public right. Meetings in the streets were not *per se* illegal, nor were they made so by official proclamation of their illegality—Dicey's Constitutional Law (7th ed.), 266 and 277. To render such meetings illegal they must be accompanied by obstruction or breach of the peace—Dicey (*cit. sup*); *Wise* v. *Dunning*, [1902] 1 K.B. 167; *Burden* v. *Rigler*, [1911] 1 K.B. 337. *Esto* that if obstruction were present the Magistrates could interfere and might arrest the wrongdoers, they had no power to prohibit *ab ante* meetings which might be perfectly peaceful or to issue licences purporting to permit them. *Esto* that under the Burgh Police Acts, as well as under the Edinburgh Municipal and Police Acts of 1879 (*cit.*) and 1891 (54 and 55 Vict. cap. cxxxvi), the Magistrates were entitled to make bye-laws and to impose penalties for their non-observance, such bye-laws must conform to the statutes and be consistent with the general law—Lumley on Byelaws, p. 85. Apart from common law and statute, the Magistrates had no power to make laws at their own hand and to attach penalties thereto. For a summary of the common law powers of the magistrates of a burgh reference was made to the Report of the Commissioners on Municipal Corporations (1835), Cosmo Innes' Scotland in the Middle Ages, Cosmo Innes' Ancient Laws and Customs of the Burghs of Scotland (1868), and to the Preface of Thomson's Acts (Folio Ed.), vol. i, pp. 40 *et. seq.*

At advising—

LORD PRESIDENT—On the 19th July 1912 the Magistrates of Edinburgh issued a proclamation which after a certain preamble, which I need not read, continued as follows:—"Therefore the said Magistrates do hereby order that persons shall not assemble or congregate or hold meetings on any part of the footpaths or roadways within the areas above described"—the area above described was a certain area at the Mound—"or in the neighbourhood thereof, from and after the date of this proclamation, unless they have previously applied for and obtained the licence of the said Magistrates thereto. All persons contravening this order are liable to the penalties set forth in the Summary Jurisdiction (Scotland) Act 1908." The pursuer of the present action did proceed to hold a meeting without having obtained the licence of the Magistrates. He was apprehended, and was convicted of having contravened the terms of the proclamation. He was convicted, but he was only admonished. No penalty was imposed on him. He did not try to suspend the conviction in the High Court of Justiciary, but he brought this civil action in which he asked for certain declarators. I need not go through the declarators for which he asked, because I am only concerned now with the declarator which he got from the Lord Ordinary. The Lord Ordinary "finds and declares that the Magistrates of the City of Edinburgh were not empowered by the common law or by any statute to issue the proclamation mentioned in the summons, and that the pursuer was not at 19th or 21st July 1912, and is not now, bound to obey said proclamation, and decerns;" and then there are certain other parts of the decree which it is not necessary to mention. The whole question which was argued before your Lordships upon the reclaiming note has been as to whether that finding of the Lord Ordinary was right or was wrong. I am of opinion that the Lord Ordinary has come to a just conclusion, and he has accompanied his judgment with a very careful and learned note, with nearly all of which I concur; the only two passages on which I shall have something to say I shall mention presently. But I think it necessary to add a few words, because I wish it to be most distinctly understood that while I agree with the Lord Ordinary, I am not to be held as concurring with much of the argumentative statement which is to be found in the pleadings of the pursuer.

The justification for the proclamation was rested by the learned counsel for the defenders (first) upon the common law and (second) upon the statute of 1606. I shall take these two points separately.

As regards the common law, I wish most distinctly to state it as my opinion that the primary and overruling object for which streets exist is passage. The streets are public, but they are public for passage, and there is no such thing as a right in the public to hold meetings as such in the streets. That brings me to one of the few points as to which I think it necessary to say something upon what the Lord Ordinary has said, because in one view of what he has said I should not agree. The learned Lord Ordinary, after saying that if the pursuer had claimed an absolute legal right to hold a meeting on a road or street he would have assoilzied the defenders upon the ground that no such right existed—a proposition with which I agree—goes on to say this—"I merely say that I dissent from the view that the public have only a bare right of passage over a country highway or over the streets of a burgh." Well, in one view of that I do not agree. On the other hand, I am not sure that there is really any difference between the views of the Lord Ordinary and my own. What I mean is this—Streets are for passage, and passage is paramount to everything else. That does not necessarily mean that anyone is doing an illegal act if he is not at the moment passing along. It is quite clear that citizens may meet in

the streets and may stop and speak to each other. The whole thing is a question of degree and nothing else, and it is a question of degree which the Magistrates are the proper persons to consider in each case, and it is for them to take such measures as are necessary to preserve to the citizens in general that use which is paramount to all other uses in the streets. I say this because there is a good deal in the pursuer's pleading about what he calls "exercising his right of free speech in public places." Now the right of free speech undoubtedly exists, and the right of free speech is to promulgate your opinions by speech so long as you do not utter what is treasonable or libellous or make yourself obnoxious to the statutes that deal with blasphemy and obscenity. But the right of free speech is a perfectly separate thing from the question of the place where that right is to be exercised. You may say what you like provided it is not obnoxious in the ways I have indicated, but that does not mean that you may say it anywhere.

I am not going to deal with what may be the case in open spaces or public places. It seems to me that no general pronouncement upon that subject could be made, because although for convenience sake one often speaks of open places or of public places, the truth is that open spaces and public places differ very much in their character, and before you could say whether a certain thing could be done in a certain place you would have to know the history of the particular place. For example, there may be certain places which are dedicated to certain uses, as was laid down in the well-known judgment of Lord Watson in the case of *Grahame* v. *Magistrates of Kirkcaldy*, 1882, 9 R. (H.L.) 91, and things that otherwise were lawful might be restrained if they interfered with the purposes of that dedication. Each of those cases must be dealt with when it arises. Here we are dealing with a street proper, because this place at the Mound is just one of the streets of the city. It is a thoroughfare, although probably not a very much used thoroughfare at that particular corner. In such a place there is not the slightest right in anyone to hold a meeting as such. On the other hand, if a man chooses to stop on the street and speak, and the Magistrates, as the best judges of that matter, do not think he is doing any harm, there is no particular reason why he should be interfered with. But the Magistrates, as the proper conservators of the streets, have got to consider two things (first) whether what is going on in the streets is at all likely to interfere with what I have said is the paramount use of the streets—the right of passage; and (secondly) whether what is going on is likely to lead to a breach of the peace. In either of those cases it seems to me that they have an absolute right *via facti* by means of the police to move the people on who are causing the obstruction. They may move them on if the congeries of persons who have congregated around is such as to prevent an ordinary peaceable citizen getting along in the street as he wishes to do. But I also think if they find a person speaking in such a way as is calculated to incite other persons to commit a breach of the peace they have a right to move him on, not because the right of free speech can be questioned, but because he is doing something which is likely to make a breach of the peace in the streets for the proper conduct of which the Magistrates are responsible. But I think their right is necessarily limited to dealing with him *via facti*. I am not speaking of the actual commission of breach of the peace. That is a common-law crime which can be prosecuted in the ordinary way. But conduct which is such as to cause an apprehension of breach of the peace may be dealt with *via facti*. There are many cases which one can easily think of without going into any speculations as to what this particular pursuer may have been saying. There are certain allegations made on record about that, but as there has been no proof I hold my mind as a perfect blank as to what the subjects of discourse were, or how they were handled by the pursuer. But I certainly know this—and I am entitled to know it from the experience of public life—I know that there are certain districts in certain cities in which a very large majority of the population hold a certain faith, or a certain form of faith, and I know that if another person, lecturer or preacher, went there and promulgated his opinions as regards that faith, although he has a perfect right to hold these opinions, and although, in a proper place he has a right to express them, his doing so in that particular neighbourhood would certainly lead to a breach of the peace. Now that is a case where I think if a man took up his stand and began his discourse on such lines, the Magistrates would be entitled at once to move him on.

While I have thought it necessary to say that—because I wish it to be very clearly understood that the Magistrates are the natural conservators of our streets in this matter, and that the citizens are not to be harried by the holding of meetings which interfere with their progress, or which lead or are likely to lead to breach of the peace—while I think it necessary to say that, it does not seem to me in any way to justify this proclamation, because although the Magistrates have the power of moving a person on, and although also they might issue what in one sense might be called a proclamation, but which would be really a notice to say that they found certain objections to meetings in such and such a place and that they proposed to move on anyone who stood there, that does not give them the power of creating an offence and fencing it with a penalty. In doing that they seem to me to have taken upon themselves a power which only the Legislature can give. And the fatal blot of this proclamation, so far as sought to be based on the common law, seems to me to be that they created an offence, and

proposed to impose penalties whenever the offence which they thereby created was committed.

So much for the common law. I only mention, to show that I have not forgotten it, that, of course, over and above what may be called the common law, there are certain powers which the Magistrates have by statute in connection with the framing of bye-laws. I need not go into that, because that is dealt with statutorily. It is fenced with certain safeguards before the bye-laws are passed, and admittedly this proclamation was not issued in respect of any bye-law.

Then I go to the Act of 1606. Now no doubt the Act of 1606, if you take it by itself, does authorise this proclamation; but I have no doubt myself whatsoever that the Act of 1606 is in desuetude. And here, again, is the only other point on which I think it necessary to say I do not quite agree with one expression of the Lord Ordinary, although I agree in the result to which he has come. He considers that without doubt the statute is in desuetude as regards meetings within buildings, but that meetings in the open air are in a different category. Then he says that in some of the opinions in *Bute* v. *More* (1870, 1 Couper 495, 9 Macph. 180) "authority for the proposition that Scottish statutes may fall into partial desuetude will be found." I am not quite sure that he agrees with that, but it is merely to make sure that there shall be no doubt about it that I venture to express my opinion to this effect. I think it is possible that a statute might be partly in desuetude and partly not where portions of the statute were separable, that is to say, the statute might deal with two matters, and as regards one matter it might be in desuetude and as regards the other it might not. But I cannot conceive that a statute could be partially in desuetude in respect of its application. What is prohibited under the Statute of 1606 is a meeting without the authority of the Magistrates. Well, that statute must be either *in observantia* or in desuetude. I do not think it can be *in observantia* as regards one class of meeting and in desuetude as regards another. If that is so—if you cannot split the statute in its application—then it seems to me clear that it is in desuetude, because we all know that the habit of public meeting has existed now from time immemorial, certainly ever since the enhanced political activity which may be said to have come in since the Reform Act of 1832; and with regard to all the meetings, on all the subjects, political or otherwise, that have been held since those days, no one ever heard of an application being made first to the Magistrates for a licence to hold any one of them. Accordingly I hold that the Statute of 1606 cannot form the basis for the proclamation.

Upon the whole matter I have come to the conclusion that the Lord Ordinary's decision is right and should be adhered to.

LORD KINNEAR—I agree both in your Lordship's conclusion and in all the reasons you have found for it, and I have nothing to add.

LORD JOHNSTON—I also agree, and I have nothing to add to what your Lordship has said.

LORD MACKENZIE—I agree with the conclusion reached by the Lord Ordinary.

The proclamation of 12th July 1908 is said to be warranted by the Act 1606, cap. 17, and also by the common law.

The Act of 1606, cap. 17, is in my opinion in desuetude. To hold otherwise would be to affirm that no persons can assemble themselves together on any occasion within burgh without first going to the provost and bailies, intimating the lawful cause of their meeting, and obtaining their licence. No body of persons, and no meeting, whether in a private house or public building, in private grounds or public park, is exempt from the prohibition of the statute, which is universal in its terms. It is impossible to construe the statute in any but the widest sense. It was argued that although it would be impossible to apply the statute to meetings held within four walls, and that to this extent the statute must be held to be in desuetude, yet it is only in partial desuetude, and the case of *Bute* v. *More* was referred to. Even assuming that when a statute prohibits A, B, and C, it may be in desuetude as regards A and yet effective against B and C, that is not the nature of the prohibition here. The prohibition is not of different acts, but of one act, *i.e.*, assembling under any conditions. For this reason it is impossible to distinguish between one kind of meeting and another. It applies to all or to none. This statute cannot be regarded as in partial desuetude only.

The decision in the case of *Deakin* founded on by the defenders did not involve a recognition of the Act of 1606. The appellants there had been guilty of a breach of the peace, and of breaking the terms of the proclamation which had been issued by the magistrates. The proclamation in that case was different from the one here, for it merely prohibited certain processions, on the ground that they were leading to riotous proceedings and were likely to cause a breach of the peace. The ground of judgment there was not the Act of 1606. If the proclamation here had been in these terms the case upon the common law aspect of it would have been different. There is no warrant, in my opinion, for the Magistrates in the exercise of their common law powers prohibiting all meetings in the places specified in the proclamation until licences bave been obtained. Still less could they attempt to adject penalties for the infringement of the proclamation.

I am, however, clearly of opinion that the powers of the Provost, Magistrates and Council at common law are not limited in the way suggested in the argument for the pursuer merely to what is contained in the Municipal Acts. They are vested with the administration of the public streets, both within the ancient and the extended royalty, including the space in question in

the present action. They could, if they thought right, prohibit any meetings being held there, or they might issue a notice prohibiting the holding of certain meetings as likely to lead to a breach of the peace. It would be the duty of the police to enforce their orders, and if anyone obstructed the police in the execution of their duty he would be prosecuted for that. I am, however, unable to take the view that, if meetings are allowed at all, any meeting can be prohibited except upon the ground that it is calculated to cause obstruction or breach of the peace.

The Court adhered.

Counsel for the Pursuer (Respondent)—Crabb Watt, K.C.—J. B. Young. Agents—Robertson & Wallace, S.S.C.

Counsel for the Defenders (Reclaimers)—Cooper, K.C.—Macmillan, K.C.—Hon. W. Watson. Agent—Sir Thomas Hunter, W.S.

Thursday, July 10.

SECOND DIVISION.

[Lord Hunter, Ordinary.

STEEL & BENNIE, LIMITED *v.* EVANGELISTA.

Ship—Salvage—Amount.

A new twin-screw steamer went aground and was rescued from a position of imminent danger by two tugs, who towed her to safety. The value of the steamship as salved was £27,837. In an action for salvage brought by the owners of one of the tugs to whom the Lord Ordinary had awarded £700, the Court, on a consideration of the *evidence* as to the services rendered, *increased* the award to £1200.

Steel & Bennie, Limited, shipowners, Glasgow, *pursuers*, brought an action against Tito Jose Evangelista, master of, and, as such, representing the owners of the steamship "Taquary," of Rio de Janeiro, then lying in the harbour of Glasgow, *defender*, for £2500 for salvage services.

The *facts* of the case are given in the opinion (*infra*) of the Lord Ordinary (HUNTER) who, on 20th February 1913, after a proof led, decerned against the defender for payment to the pursuers of the sum of £700.

Opinion.—"The pursuers are the registered owners of the tug 'Cruiser' of Glasgow. They sue for themselves, and also as representing the master and crew of the said tug, to recover from the defender, who is the master and as such represents the owners of the Brazilian steamship 'Taquary,' a sum in name of salvage services, rendered by the said tug to the said steamship. It is not disputed that the services rendered were in the nature of salvage services. The only question that I have to determine is the amount of the award.

"On 25th February 1912, being a Sunday, about 1 a.m., the 'Taquary,' which is a new twin-screw steamer of 1942 tons gross and 1175 nett register, went aground on the west side of Ailsa Craig. There is considerable conflict in the testimony of the different witnesses as to the exact position where she lay. The point does not appear to me to be of great materiality. I think that she was less to the north than was represented by the witnesses for the pursuers, and not so much to the south as represented by the witnesses for the defenders. Her position may be taken as somewhat to the north of the point called the Boating Stone on the chart of the Craig. I do not think that at any time she was broadside on to the beach, but undoubtedly the position in which she lay exposed her to great risk of destruction in the event of a strong wind or sea from the south-west. At the time when she grounded there was practically no sea, and the wind, which was only a slight breeze, was blowing from the north. She was not therefore in imminent danger of breaking up. In the course of the early morning, two steamers, the 'St Catherine' and the 'Woodcock,' communicated with her. The defender did not request either vessel to give him assistance in the way of attempting to get the 'Taquary' off. He was content to entrust them with the sending of telegrams to the managing owners and to the Insurance Company. This course may to some extent have been dictated by a dread lest the vessel on being pulled off the rocks might sink. At the same time, I do not think he would have refused assistance had the state of the wind or sea given him cause for immediate anxiety.

"The 'Cruiser,' which is a tug engaged in towing vessels up the Clyde to Glasgow, was on the morning of the 25th engaged in 'seeking' or looking for work, when she sighted the 'Taquary.' She is said at the time to be in attendance upon the 'Hyltonia' and expected to be engaged in towing that vessel. On sighting the 'Taquary' she went and offered her assistance, which was accepted. This was about 7·30 a.m., and from that time she remained in attendance until 3 or 3·30 p.m., when, with the assistance of the 'Setter,' a vessel which came up about 1·20, she succeeded in floating the 'Taquary.' The 'Cruiser' and the 'Setter' towed the 'Taquary' from Ailsa Craig to the Tail of the Bank, a distance of about 47 miles. The towing operations lasted about 12 hours. From the Tail of the Bank the 'Cruiser,' with the assistance of another of the pursuers' tugs, towed the 'Taquary' to Glasgow, but payment for this latter service has been made and therefore does not enter into the present calculation.

"In rendering her services to the 'Taquary' the 'Cruiser' was exposed to no risk, and the lives of none of her crew were ever in danger. The work done was not difficult, and did not call for the exercise of any special skill in seamanship. The services were, however, certainly useful. In the first place, the 'Cruiser' had