interdict can be refused as against Douglas, whose case is covered in terms by the case of the *Duke of Buccleuch* v. *Smith*. The only ground on which the Lord Ordinary refuses interdict against Douglas is because it has not been proved by the complainers that the catching of salmon and not flounders was not the real object of his fishing. I cannot agree with the Lord Ordinary where he says that the *Duke of Buccleuch's* case is entirely different in its facts from the present case. It seems to me identical in all essential features, and even identical in all important features with one exception, that the respondent Parker has dispensed with the use of a cover—a contrivance which was held important, but which, as I read the opinions in that case, was not, as the Lord Ordinary seems to think, the ground on which the Court was induced to interdict the white fishers in 1911. As to the other respondents, I agree that the interlocutor proposed by Lord Salvesen is the right one.

LORD JUSTICE-CLERK—I am of the same opinion. Looking into this case I have come to the conclusion that I could not add anything to what I said in the former case, which I think in all practical directions leads to the same result.

LORD DUNDAS was sitting in the Extra Division.

The Court pronounced this interlocutor—

"Recal the interlocutor reclaimed against: Interdict and prohibit the respondents James Parker and Joseph Douglas, and each of them, from erecting and using, excepting during the close time for salmon, fishing stake nets, paidle nets, or other fixed engines for the purpose of capturing salmon or fish of the salmon kind, or fitted to capture salmon or fish of the salmon kind, in the river Annan or estuary thereof, and upon the sands and shores between high and low water-marks within the limits of the district of the river Annan fixed and defined by the Commissioners acting under the Salmon Fisheries (Scotland) Act 1862. . . ."

Counsel for the Complainers—Blackburn, K.C.—Lord Kinross. Agents—Dundas & Wilson, C.S.

Counsel for the Respondent, Parker—Watt, K.C.—Duffes. Agent—William C. Morris, Solicitor.

For the Respondent, Douglas—Party.

Wednesday, February 25.

OUTER HOUSE.

[Lord Anderson.

LAIRD *v.* SCOTT.

Bankruptcy — Sequestration — Petition — Expired Charge on Debt Due to Another Creditor — Satisfaction of Debt Charged for Subsequent to Expiry of Charge — Bankruptcy (Scotland) Act 1913 (3 *and* 4 *Geo. V, cap.* 20), *sec.* 29.

The Bankruptcy (Scotland) Act 1913 enacts—Section 29—"Where the petition is not by or with the concurrence of the debtor, or, if dead, of his successor, and if the debtor, or if dead his successor, do not appear at the diet of appearance, either in person or by his counsel or agent, and show cause why the sequestration cannot be competently awarded, or if the debtor so appearing do not instantly pay the debt or debts in respect of which he was made bankrupt, or produce written evidence of the same being paid or satisfied, and also pay or satisfy or produce written evidence of the payment or satisfaction of the debt or debts due to the petitioner, or to any other creditor appearing and concurring in the petition, the Lord Ordinary or Sheriff, on production of evidence of the citation and of the foresaid requisites for sequestration, shall award sequestration in the manner and to the effect before mentioned. . . ."

A, the endorsee of a bill accepted by B, presented a petition for the sequestration of B's estates, on the ground that B had been charged to make payment of certain debts due to another creditor C, and that the days of charge had expired without payment having been made. B produced written evidence that the debts due to C had been subsequently satisfied, and craved the Court to dismiss the petition.

Held (*per* Lord Anderson, Ordinary) that, in the circumstances of the case, B was entitled to have the petition dismissed on making consignation in Court of the amount of the debt claimed to be due to A on the bill, and on consignation or payment of the expenses incurred by A in connection with the petition.

James Laird, Elswick House, Forfar, *petitioner*, presented a petition for the sequestration of the estates of Miss Jessie Scott, Nellfield House, Braidwood, Lanarkshire, *respondent*.

The *circumstances* of the case and the arguments of parties sufficiently appear from the opinion of the Lord Ordinary (Anderson).

LORD ANDERSON—This is a petition for the sequestration of the estates of Miss Jessie Scott, Nellfield Lodge, Braidwood, Lanarkshire, and the petition is at the instance of a creditor named James Laird,

Elswick House, Forfar. The creditor holds a bill as endorsee—a bill for the sum of £275, which was drawn on 30th December 1909 by Mr John Robertson, solicitor, Edinburgh, and accepted by Miss Jessie Scott and by her brother-in-law. The bill does not show at what date it was endorsed by Mr Robertson to Mr Laird. The present proceedings are in a sense a sequel to certain other proceedings in which Mr Laird attempted to obtain the sequestration of this lady, and which I had to deal with as Lord Ordinary on the Bills. The judgment which I pronounced in that case was, I understand, reclaimed to the Inner House and appeared on the rolls, but on the motion of the reclaimer the reclaiming note was dismissed. The two cases present these features in common, that neither in the earlier process nor in the present process has Mr Laird, although he holds a document of debt upon which he might have done summary diligence, attempted to do diligence in any way against Miss Scott as her creditor. In the present case the basis of his demand that her estate should be sequestrated is this, that he ascertained that another creditor of Miss Scott, a gentleman named Miller, had charged her in respect of two different debts to make payment of those debts to him, and that the days of charge had expired. Well, apparently it is quite competent for a creditor to adopt that somewhat tortuous method of obtaining the advantage of diligence against his debtor, and Mr Laird has accordingly founded upon the fact that diligence has been done, and that the charge for payment has expired without payment having then been made within the days of charge. But having obtained the ordinary first order from me, in the present petition he has produced as evidence of insolvency and notour bankruptcy a report of a commission which was executed in Glasgow.

The first matter I have to deal with has reference to the form in which this petition is presented. It was maintained by the respondent in this case that I ought not to look at this petition at all, and ought to decide that it does not competently instruct insolvency and notour bankruptcy, in respect that the evidence taken by the commissioner having been taken by means of a shorthand writer, there is neither a statement in the report of the commission that it had been agreed to dispense with the signatures of the respective witnesses to their respective depositions, nor had the depositions in point of fact after having been extended been signed by the respective witnesses. I do not propose to decide this point one way or other, because it seems to me to be in the interests of the parties to have this matter brought to a head and progress made in connection with the disputes which are pending between them. Accordingly I content myself with saying, without deciding anything, that my understanding of practice is that there should be either signature to the depositions by the witnesses or the report of the commission ought to contain a statement to the effect that those signatures have been by agreement dispensed with. But then I come to the more substantial argument which was advanced by the respondent in resisting the application for sequestration. The respondent has appeared here to-day, and she does so in respect of a minute which was lodged on her behalf by her counsel. In that minute what is said by the respondent is (1) that there is no written evidence that the debtor is notour bankrupt, (2) that the debts in respect of which the charges produced were given have been paid or satisfied, (3) that the debtor is not insolvent, but is able to meet her obligations as the same fall due, (4) that the voucher of the petitioner's debt is a bill dated 30th December 1909, drawn by Mr John Robertson, solicitor, Edinburgh, who is the law agent of the petitioner, and who at the date of said bill was the law agent of the debtor, forming part of a series of transactions between Mr Robertson and the debtor extending over a period of years; that the said John Robertson has never attempted to do diligence or to raise action upon the said bill; that no value was granted to the debtor for the said bill, and that in any event upon a true accounting between the debtor and the said John Robertson the bill was paid or compensated before its endorsation by Mr Robertson to the petitioner; and (5) that the debtor is willing and hereby offers to consign in Court the amount of the said bill or to pay the same if required.

Now it was argued by the respondent's counsel that she was entitled to rebut the presumption of insolvency which arises from the fact that certain charges of payment had been made and that these charges had expired without payment having been made. And the mode in which it was maintained that that presumption was successfully rebutted was this, that payment had in point of fact been made of the debts upon which the charges for payment had been given. Now there has been submitted to me written evidence, which I accept, that the debts in respect of which charges for payment had been made have been paid. The respondent, founding upon section 29 of the Bankruptcy (Scotland) Act 1913, asks me now to dismiss this petition in respect of that evidence of payment of the debts upon which there had been charge, coupled with this, that she now expresses her willingness, as she has done in her minute, to make consignation of the amount of her debt to the petitioner Mr Laird. The petitioner concedes that section 29 is applicable to the present situation, where nothing more has been done than to pronounce a first order in the sequestration, and the only point which the petitioner took in reply to the offer of consignation which was now made was this, that the circumstances are not those in which consignation is appropriate, and that accordingly consignation if made in the present circumstances would not amount in the sense of the language of the section to satisfaction. I am of opinion that in the peculiar circumstances of this case, as they have been disclosed to me in the argument which has been addressed to me by counsel and in the formal statements which I have read from the respondent's minute, if the respondent makes consignation to an extent to

which I will allude, then she shall have made satisfaction in the sense of section 29 of the Bankruptcy Act 1913, and will be entitled on such consignation having been made to have the petition for her sequestration dismissed. The respondent in a case of this sort in making consignation ought also, in my opinion, to consign such a sum as will reasonably satisfy the expenses to which the petitioner has been put up to the present time, or make payment of those expenses as I may modify them.

I therefore decide that on consignation by the respondent in the hands of the Accountant of Court of the sum of £275, and on payment to the petitioner of the sum of 12 guineas, she is entitled to have this petition dismissed.

The Lord Ordinary refused the prayer of the petition.

Counsel for the Petitioner—M'Lennan, K.C.—Maclaren. Agent—John Robertson, Solicitor.

Counsel for the Respondent—Macphail, K.C.—Dykes. Agent—James Scott, S.S.C.

Thursday, July 2.

EXTRA DIVISION.

[Sheriff Court at Aberdeen.

BURNETT *v.* PRESSLEY.

Reparation — Negligence — Contributory Negligence—Cycling on Wrong Side of Road—Motor Car Insufficiently Lighted — Motor Cars (Use and Construction) (Scotland) Order 1904, *Art. II* (7) (*i*).

Circumstances in which *held* that a cyclist having deviated from the right side of the road and a collision having occurred, the accident was solely due to the fault of the other party, and contributory negligence could not be imputed to the cyclist.

The Motor Cars (Use and Construction) (Scotland) Order 1904, dated March 30, 1904, Art. II (7) (i), provides that the lamp to be carried attached to a motor car in pursuance of section 2 of the Locomotives on Highways Act of 1896 "shall be so constructed and placed as to exhibit during the period between one hour after sunset and one hour before sunrise a white light visible within a reasonable distance in the direction towards which the motor car is proceeding," and shall be placed "on the extreme right or off side of the motor car."

George Pressley, teacher of dancing, 494 King Street, Aberdeen, *pursuer*, brought an action in the Sheriff Court at Aberdeen against John Alexander Burnett of Kemnay, Kemnay House, Aberdeenshire, *defender*, in which he claimed £500 damages for bodily injuries and loss sustained by him "through having collided on 20th September 1912 on the public road between Blackburn and Kintore with a motor car driven by and belonging to defender."

The pursuer averred—"(Cond. 2) Pursuer has dancing classes at Inverurie, Oldmeldrum, and other places. On 20th September 1912 he opened a class at Inverurie, and after the classes were closed for the evening he started to cycle from Inverurie to his home in Aberdeen on a motor bicycle. He left Inverurie at 10 o'clock p.m., and when riding on the public road between Kintore and Blackburn he was run into by a motor car driven by and belonging to defender. (Cond. 3) Said collision happened a little after 10·30 p.m. on said 20th September 1912, being at a period between one hour after sunset on 20th September and one hour before sunrise on 21st September 1912. Between these hours it was the duty of defender, in terms of Art. II (7) Motor Cars (Use and Construction) (Scotland) Order 1904, in driving his said motor car to carry on the extreme right or off side a lamp, lighted, constructed, and placed so as to exhibit a white light, visible within a reasonable distance in the direction towards which his car was proceeding, and in this duty he failed."

The defender admitted that he had contravened Art. II (7) (i) of the Motor Cars (Use and Construction) (Scotland) Order 1904, but maintained that the collision was entirely due to the fault and negligence of the pursuer in riding his bicycle at too high a rate of speed and on the wrong side of the road.

The Sheriff-Substitute (YOUNG) having held that the accident was due to the fault of the defender in disregarding a statutory order, and that contributory negligence on the pursuer's part had not been proved, awarded the pursuer £100 damage.

The defender appealed to the Court of Session, and argued—It was a well-established rule that people on public roads must take care of themselves, and it was the pursuer's own fault to assume that the approaching vehicle was a cycle. He had acted wrongly in attempting to cut in between what he thought was a cart and a cycle. In similar circumstances, in *Edinburgh and Leith Hiring Company, Limited* v. *Midlothian County Council*, February 17, 1906, 13 S.L.T. 758, the plea of contributory negligence had been upheld, and this case was *a fortiori* in respect that the pursuer had no reason to leave his own side of the road—*Gibb* v. *Edinburgh and District Tramways Company, Limited*, 1913 S.C. 541 (L.P. Dunedin at 544), 50 S.L.R. 347. Assuming that the defender was in fault, if the pursuer could have avoided an accident then he was guilty of contributory negligence—"*The Bernina*," 1887, L.R., 12 P.D. 58 (Lindley, L.J., at 89). The defender in no way induced him to leave his own side of the road, and thus the case of "*The Bywell Castle*," 1879, L.R., 4 P.D. 219, was inapplicable—Pollock on Torts, 9th ed., 490. There was no authority for the proposition that breach of a statute or statutory order ruled out the plea of contributory negligence, and it was against the practice in shipping collision cases.

Argued for the respondent—The course which the pursuer took was reasonable in the circumstances. Even were he guilty