

[24th June, 1842.]

JAMES REDDIE, and Others, Secretaries to, and acting on behalf of, the Trustees for Improving the Navigation of the River Clyde, *Appellants*.

JOHN TODD, and Others, Trustees and Representatives of Charles Todd, deceased, *Respondents*.

*Jurisdiction. — Suspension.* — Where there is a question, as to whether matter in dispute is within exclusive statutory jurisdiction conferred on an inferior court, suspension is competent without abiding the issue of the proceeding in the inferior court, and although a jury may even have been sworn to try the question.

*Jurisdiction. — Acquiescence.* — Matter not within exclusive statutory jurisdiction *held* not to have been brought within it by waiver of parties.

CHARLES TODD, the author of the respondents, was proprietor of land on the banks of the River Clyde, which he held of the Magistrates of Glasgow as his superiors. In 1833, he sold 2700 square yards of this land to Wingate, to be held of himself for payment of a ground annual of L.93, 18s. In 1837, he sold Wingate another portion, of 3865 yards, adjoining the river, to be likewise held of himself for payment of a yearly feuduty of L.222, 19s. 9d. The conveyances of these portions were made with a clause of absolute warrandice, by Todd.

After the date of these conveyances, the appellants claimed a portion of the land included in the last mentioned conveyance, as additions to the original banks of the river, created by their operations on the bed of the river, and raised an action for substantiating this claim, which lay over to abide the issue of another similar question between the appellants and the respon-

---

dents, in regard to the portion of land which had not been disposed of by Todd.

The powers under which the appellants acted in their operations on the navigation of the Clyde, were derived under several statutes, the last of which was the 3d and 4th Vict. cap. 118.

By the 11th section of that statute, the appellants are empowered to perform certain operations, “And for these purposes to enter upon, take, occupy, and use the several and respective lands, tenements, or other heritages upon, through, or adjoining to which the same are intended to be made, carried, executed, or constructed, within the boundaries or lines of works delineated on the said map or plan, or within the limits of the after-mentioned deviation.”

By the 24th section of the act, upon the narrative that questions had been, and might be raised, “in relation to the rights of individual proprietors of lands along the banks of the said river,” (other than certain proprietors therein referred to,) “to compensation for ground or other heritages partly comprehended within the lines of operations delineated on the said map or plan, and situated within the former water-way, or alveus or channel of the said river,” it is enacted, “That nothing herein contained shall be held to affect such rights to compensation as may legally belong to such proprietors, provided always, that in the event of the said trustees finding it necessary, in the meantime, for the public advantage, or for the accommodation of the shipping resorting to the said river and harbour, to take possession of any part or portion of such ground or other heritages under this act, before the settlement of the said questions, or of such legal processes as may be instituted in relation thereto, the said trustees may apply by petition to the Sheriff of the county in which such grounds or heritages are situated, setting forth this act, and the existence or dependence of such questions, and craving the said Sheriff

REDDIE v. TODD. — 24th June, 1842.

---

“ to grant warrant for summoning the parties interested to  
“ appear, upon reasonable *induciæ* ; and the parties being so  
“ called, the said Sheriff shall proceed to fix and determine, by  
“ competent evidence before a jury to be impannelled in manner  
“ hereinafter provided, the relative boundaries of the particular  
“ and respective portions of such ground or other heritages for-  
“ merly within the water-way, or alveus or channel of the said  
“ river, distinguishing the ground or embankments so situated  
“ from the lands lying beyond or not within the said former  
“ water-way, alveus, or channel ; and the respective grounds  
“ before mentioned having been so ascertained, and accurately  
“ defined and laid down on a map or plan thereof, the said  
“ Sheriff and Jury shall forthwith inquire into, assess, and fix,  
“ by the verdict of a majority of the number of the said jury, the  
“ true and just value of the portion in question of the said  
“ grounds or shores comprehended within the lines delineated on  
“ the said map or plan, and situated within the former water-  
“ way, alveus, or channel of the said river ; which verdict shall  
“ be subscribed by the foreman of the said jury, and by the said  
“ Sheriff, and shall be final and binding on all parties as to the  
“ value of such grounds, shores, or embankments : And in the  
“ event of the applications or petitions to the Sheriff before  
“ mentioned embracing any part of the land or heritages  
“ belonging to the said proprietors, not within the former water-  
“ way, alveus, or channel of the said river, the verdict of the said  
“ jury shall distinguish the portion of the lands or heritages so  
“ situated, and the price or value thereof, from the ground or  
“ shores now or formerly within the said water-way, channel, or  
“ alveus, in order that the price or value of the said lands or  
“ heritages may be paid over to the proprietor thereof, or other-  
“ wise disposed of in manner herein after enacted in cases of  
“ taking property generally under the present act.”

By section 25th it is farther enacted, “ That upon the said

REDDIE *v.* TODD. — 24th June, 1842.

“ trustees consigning or paying into any of the banks in  
 “ Scotland established by act of Parliament or royal charter,  
 “ the sum or sums of money that may be so assessed and  
 “ fixed by the verdict of such jury as the true and just value of  
 “ such grounds or embankments situated within the foresaid  
 “ water-way, alveus, or channel, in order to abide the final issue  
 “ and determination of the questions before mentioned, or such  
 “ legal proceedings as may be adopted in relation thereto, the  
 “ said trustees shall be entitled immediately thereafter to take,  
 “ occupy, and use such grounds or embankments for the pur-  
 “ poses of this act.”

By section 92, it is enacted, — “ That the rights and titles  
 “ to be granted in manner before mentioned to the said trus-  
 “ tees, to the premises therein described, shall not in any  
 “ measure affect or diminish the superiority of the same ;  
 “ but notwithstanding such conveyances, the superiority shall  
 “ remain as before, entire in the persons having right to the  
 “ same.”

By the 94th section it is enacted, “ That in case the price or  
 “ value to be paid for any lands, tenements, or other heritages  
 “ taken or used for the purposes of this act,” should not be  
 adjusted between the parties, “ or in case the proprietor or per-  
 “ son shall not produce and evince a clear title to the premises  
 “ in dispute, or to the interest which they claim therein, to the  
 “ satisfaction of the said trustees ;” or if the said trustees should,  
 for one month after notice “ by any proprietor or occupier of, or  
 “ persons interested in any lands or heritages taken or used for  
 “ the purposes of this act,” neglect or refuse to treat with him,  
 or not agree with him, then he should be empowered to make  
 application to the Sheriff of the county for the purpose of having  
 the price or value ascertained by the verdict of a jury ; and the  
 Sheriff shall then summon a jury, and “ inquire into, assess and  
 “ fix, by the verdict of a majority of their number, the sum

REDDIE v. TODD. — 24th June, 1842.

“ of money to be paid for such lands or heritages as aforesaid,  
“ and such Sheriff shall give judgment for the purchase-moneys  
“ or recompense assessed by such jury; which verdict, and the  
“ judgment thereupon, shall be signed by such Sheriff, and  
“ shall be binding and conclusive to all intents and purposes  
“ against all bodies politic, corporate, or collegiate, and all other  
“ persons whomsoever, without being subject to reduction, advo-  
“ cation or suspension, or to any question or review in any way  
“ whatsoever.”

In the schedule annexed to the act, specifying the “ owner or  
“ reputed owners, either claiming an absolute right of property  
“ in the lands,” &c. “ or as adjacent proprietors claiming a right  
“ to, or interest in, the ancient or modern alveus of the river,”  
the name of Charles Todd occurred as “ superior,” and Thomas  
Wingate as “ feuar,” and also as occupier of “ part of the river  
“ bank, chiefly covered with rubbish.”

On the 17th September, 1840, the appellants, by their secre-  
tary, addressed a letter “ To Messrs Thomas Wingate, Engineer  
“ and Founder, Glasgow, and to Messrs John Todd,” &c. “ trustees  
“ and representatives of the deceased Mr Charles Todd,” in which  
the writer, after stating the statutory powers, continued, — “ I  
“ offer to you, the trustees and representatives of the said Charles  
“ Todd, for all right, property, and interest, belonging to you  
“ in the machine-work, dwelling-house, and grounds, forming  
“ parts and portions of the lands of Springfield, or grounds ad-  
“ jacent thereto, on the south side of the said river, as the said  
“ machine-work, dwelling-house, and grounds, are included  
“ within the Parliamentary lines of improvement of the said  
“ river and harbour, and as the same are marked No. V., No.  
“ VI. and No. VII., and delineated on the plan which accom-  
“ panies these presents; which plan is subscribed by me as rela-  
“ tive hereto, the following sums: — That is to say, the sum of  
“ L.1025 sterling, for lot marked No. V., before mentioned, to  
“ be consigned in bank, until the ownership of the said ground

REDDIE *v.* TODD. — 24th June, 1842.

“ shall be ascertained, as directed by the said Act; and the sum  
 “ of L.4000 sterling, for lots No. VI. and No. VII., before  
 “ mentioned, to be paid agreeably to the provisions of the  
 “ said Act; and I hereby offer to you, the said Thomas Win-  
 “ gate, the sum of L.50 sterling, for all right, property, and  
 “ interest, belonging to you in the said lot marked No. V. to  
 “ be consigned as aforesaid, and the sum of L.2175 sterling  
 “ for all right, property, and interest belonging to you in the  
 “ said lots marked No. VI. and VII., to be paid as aforesaid:  
 “ Declaring always, that these offers are made on the express  
 “ condition that, on payment or consignment being made of  
 “ the said sums, as directed by the said Act, you, the trustees  
 “ or representatives of the said Charles Todd, and the said  
 “ Thomas Wingate, shall be bound to deliver to the said trustees  
 “ a clear and unexceptionable title to the said subjects, and to  
 “ remove and discharge all burdens and encumbrances of every  
 “ kind affecting the same, excepting such right of superiority  
 “ over the said subjects as may belong to the city of Glasgow,  
 “ and the feu-duties or other prestations payable to the said city  
 “ as superiors thereof, and also excepting such provisions, restric-  
 “ tions or servitudes, conventional or legal, as may be constituted  
 “ over the said subjects by the original feu-rights, granted by the  
 “ said city of Glasgow, or which may be attached to the said  
 “ subjects at common law.”

This letter concluded by giving notice that, in case the offer were not accepted, “ and a clear title to any right, property, and  
 “ interest, legally belonging to, or claimed by you, respectively,  
 “ given,” proceedings would be taken under the statute, for having the value ascertained.

The offer was not accepted, and the appellants then served upon the law agents of the respondents the notices required by the statute, with a view to having the value assessed, the agents having by letter agreed to accept of such service.

Thereafter the appellants presented a petition under the statute

REDDIE v. TODD. — 24th June, 1842.

to the Sheriff, in which, after setting forth their offer, and its refusal, and the existence of the actions in regard to a part of the ground required by them, which have been already noticed, they prayed the Sheriff, among other things, to empanel a jury to determine by their verdict, “the boundaries of the water-side  
 “ground, which is at present the subject of litigation, in the  
 “foresaid action of declarator, and the value of such disputed  
 “ground, in order that the same may be consigned until the  
 “ownership of the said ground shall be ascertained and deter-  
 “mined, and to fix the amount of compensation which may be  
 “due to the said Thomas Wingate, and to the trustees or re-  
 “presentatives of the said Charles Todd respectively, for the  
 “said disputed ground, in the event of their ultimately obtaining  
 “a judgment in their favour in the said action, all in the man-  
 “ner directed by the last recited Act; and also to determine, by  
 “the verdict of such jury, the sum or sums of money to be paid  
 “by the said parliamentary trustees to the said Thomas Win-  
 “gate, and to the trustees or representatives of the said Charles  
 “Todd, as the amount of compensation due to them respectively  
 “for the remaining portion of the subjects above described,  
 “according to their respective rights and interests therein, all in  
 “terms of the said recited Acts; and upon the boundaries and  
 “value of the said subjects being fixed and ascertained in man-  
 “ner foresaid by the verdict of the said jury, to pronounce judg-  
 “ment in terms thereof, and of the said statutes, and to discern  
 “and adjudge the said subjects to belong to the said parliamen-  
 “tary trustees in all time coming, upon their consigning the  
 “value of the said disputed ground, and making payment or  
 “consignation of the value of the remaining subjects, to be ascer-  
 “tained in manner foresaid.”

On the 19th October, a minute was signed by those acting on behalf of Wingate, and the appellants and respondents, which was in these terms:— “It is mutually agreed that the trials in

REDDIE *v.* TODD. — 24th June, 1842.

“ the above cases are to take place on a day or days to be  
 “ arranged by the counsel for the parties, not later in all the  
 “ three cases abovementioned, the petitions of which are now  
 “ marked by the Sheriff, than the 10th of January 1841, all  
 “ preliminary objections to these trials in point of form being  
 “ hereby departed from by the defenders; and that in the cases  
 “ of Higginbotham and Todd’s Trustees, in reckoning the six  
 “ months within which their cases must be tried, as provided for  
 “ in the statute, the period from this date to that of the trial  
 “ shall not be reckoned, and that in the mean time examinations  
 “ of havers may proceed to prepare productions for the trials,  
 “ and reserving to the Clyde Trustees, in the intervening period  
 “ before the trials, to apply to the Sheriff for a judicial inspec-  
 “ tion of the works for which value is claimed, by proper per-  
 “ sons, in the event of access to them being refused by the de-  
 “ fenders, and to the defenders their objections thereagainst, and  
 “ reserving to the trustees to present their petitions for trial in  
 “ such order as they shall think fit, and to the defenders their  
 “ objections thereagainst.”

On the 5th December, 1840, the counsel for the parties signed this farther minute, — “ It is hereby agreed that the trial  
 “ of Wingate is to be fixed for Friday the 25th of December,  
 “ Higginbotham’s to be fixed for Monday the 28th, and Todd’s  
 “ case to follow it. The jury for Todd’s case to be cited for  
 “ Wednesday the 30th.”

The Sheriff, on the application of the appellants, without ordering answers to the petition, fixed the trials for the 25th December, and granted commission for examination of havers. This commission was joined in, both by the appellants and respondents, who respectively examined havers under it.

On the 25th of December, 1840, counsel and agents appeared for the appellants and respondents respectively, and separate counsel and agents appeared for Wingate. Before the jury were



---

REDDIE v. TODD. — 24th June, 1842.

---

called, Mr Robertson, counsel for the respondents, stated, that, on the part of the trustees, he maintained that it was not competent for the petitioners, under the statutes founded on, to compel a party in the situation of a superior or owner of feu-duties or ground-annuals, to sell the feu-duties or ground-annuals due to him, or any other of his rights as superior or owner of feu-duties or ground-annuals, and that there was no jurisdiction under which proceedings for a valuation and sale of said feu-duties, ground-annuals, or other rights could competently be taken; and on behalf of the said trustees who were the superiors of Mr Wingate in the ground forming the subject of the petition, or owners of feu-duties or ground-annuals arising thereupon, he craved that the petition should be dismissed *quoad* the trustees with expenses, or that a judgment should be pronounced, finding and declaring that the feu-duties, ground-annuals and other rights belonging to the said trustees, as superiors aforesaid, or as the owners of feu-duties or ground-annuals arising from the said ground, should not be made in any view the subject of the present proceedings.

The Sheriff repelled the objection.

Whereupon Mr Robertson intimated the intention of the trustees to advocate this judgment, — tendered a bond of caution, and craved the Sheriff in the meantime to stay farther proceedings.

The Sheriff refused leave to advocate.

Whereupon Mr Robertson for the trustees, (the respondents,) without prejudice to his right to complain of the foregoing judgments, moved that the Sheriff should separate the cases of Mr Wingate and of the trustees respectively, and appoint them to be tried separately.

The Sheriff refused, in respect no special cause was shewn for the separation.

The jury were then called and sworn: a view was ordered, and farther proceeding was adjourned until next morning.

REDDIE *v.* TODD. — 24th June, 1842.

The respondents, in the meanwhile, presented a note of suspension to the Lord Ordinary on the bills, accompanied by a statement, which, after setting forth the procedure which had taken place before the Sheriff in regard to their objecting to the competency of the procedure, but without noticing the previous concurrence of the parties, continued thus: — “ The Sheriff re-  
 “ pelled the objection stated by the complainers, held his own  
 “ jurisdiction to be good in the matters in question, and appointed  
 “ the trial to proceed, to the effect of not only assessing the  
 “ value of the property, but also of the rights of superiority, feu-  
 “ duty and ground-annual belonging to the complainers; the  
 “ said trial to be proceeded with on to-morrow the 26th day of  
 “ December 1840.

The pleas in law on which the respondents supported their note were, — “ I. The trustees of the River Clyde have no right,  
 “ by virtue of the statutes under which they act, to take from  
 “ any one, or to enforce a compulsory sale of feu-duties, ground-  
 “ annuals, or rights of superiority, their whole right being con-  
 “ fined to property merely, leaving the whole rights of superiority  
 “ unaffected. They have, therefore, no right to insist in, or  
 “ carry on, statutory proceedings for a valuation and sale of feu-  
 “ duties, ground-annuals, or rights of superiority. Nor is there  
 “ any jurisdiction in the Sheriff to order or sanction such pro-  
 “ ceedings.”

“ II. The said trustees wrongfully going on to take proceed-  
 “ ings of the description before stated, the complainers are  
 “ entitled to have suspension and interdict against them as  
 “ craved.”

The Lord Ordinary granted interim interdict upon the note of suspension, which was intimated to the Sheriff and the appellants on the morning of the 26th; and the appellants refusing to proceed with the trial as against Wingate alone, which the Sheriff allowed them to do, the Sheriff discharged the jury, and reserved all questions as to expenses.

REDDIE *v.* TODD. — 24th June, 1842.

---

The appellants, on the same day, presented answers to the note of suspension and statement of the respondents, wherein they set forth, that “after the trial had commenced on the 25th instant, the suspenders, for the first time, raised the objection which forms the subject matter of the present complaint.”

The pleas in law upon which the appellants rested their case were : —

“ I. The suspenders ought not now to be allowed to raise and maintain their present objection, to the effect of delaying or obstructing the begun trial, more especially as proceeding with the trial cannot, according to their own view, ultimately prejudice the suspenders’ alleged right.

“ II. The suspenders’ objection is not well founded, according to the sound construction of the statute, but is plainly excluded by the statute.

“ III. The suspenders’ note ought, therefore, to be simpliciter refused, or at least the interim interdict granted ought to be recalled, so as to allow the trial to proceed.”

On advising the papers, and hearing counsel, the Lord Ordinary pronounced the following interlocutor : — “ 26th December, 1840. — The Lord Ordinary having considered the note of suspension and answers, and heard counsel, at the request of parties, in respect that the complainers admit the right of the respondents to enter upon the several lands, tenements, or other heritages in question, for the purposes of the act ; as also that the trials shall proceed so far as regards the proprietors, occupiers, or persons interested in any such lands or heritages, with the exception of the rights of superiority, which it is enacted that the said statute shall not in any measure affect or diminish, but that the same shall remain as before, entire in the persons having right thereto, — And in respect that the valuation of the said rights of superiority so reserved

REDDIE v. TODD. — 24th June, 1842.

“ does not fall under the statute, passes the note and continues  
“ the interdict.”

The appellants then presented a note, in which they craved a sist of procedure to allow them to lodge a reclaiming note, and on the 28th December, the Lord Ordinary granted the sist asked, adding the subjoined note to his interlocutor.

“ *Note.* — The Lord Ordinary considers the construction of this  
“ act of parliament a matter of some importance, although it is one  
“ on which he felt no doubt. Two rules have been applied by courts  
“ of justice in the construction of acts of parliament, which take away  
“ individual rights of property, in order to attain some improvement  
“ of a public nature, 1st, That they should be construed liberally, so  
“ far as regards the object in view; 2dly, That they should be con-  
“ strued very strictly, and favourably to those who appear for private  
“ rights, where it is not necessary to take away those rights with a  
“ view to the contemplated operations. In this case there is an  
“ express clause reserving all rights of superiority in very strong  
“ terms, and those who appear for the superiors did not object to  
“ every thing being taken possession of that the Clyde trustees  
“ require for improving the navigation, and to the trials proceeding,  
“ in order to value any such rights; but they maintained that the  
“ rights of superiority, which were expressly reserved, did not fall  
“ under the operation of the statute. Whether, therefore, the general  
“ objects of the statute, or the particular clauses which were brought  
“ under the Lord Ordinary’s view were regarded, there was no  
“ ground for holding that the rights of superiority were in any  
“ measure to be affected, or made the subject of trial under the  
“ statute. On the other hand, there seemed no reason why the trial  
“ should not proceed, so far as regarded all rights of property and  
“ possession belonging to the vassals or other persons.”

The appellants then presented a reclaiming note, and on the 19th February, 1841, the Court pronounced the following interlocutor: — “ The Lords having advised this reclaiming note, and

REDDIE v. TODD. — 24th June, 1842.

“ heard counsel for the parties, recal, *hoc statu*, the reasons set forth in the interlocutor complained of; but, *quoad ultra*, adhere to the said interlocutor, and refuse the prayer of the reclaiming note.”

The appeal was against the interlocutors of the Lord Ordinary and the Court.

*Mr Pemberton and Mr Thessiger for the appellants.* — I. The proceeding which was taken by the respondents to stop the trial was wholly incompetent upon three grounds, — 1st, Supposing it to have been competent for them to interrupt the proceedings at the particular stage at which they intervened, avocation was the proper remedy; suspension being the mode, not of bringing up inchoate proceedings to the superior Court, but of preventing execution upon the decree of the inferior Court, after it has been given, *Ersk.* IV. 2. 40: the statute 50 Geo. III. cap. 112, sec. 36, specially makes avocation the mode of complaint where, as in this case, the matter of it is “incompetency, including defect of jurisdiction.” And so in *Buchanan v. Lumsden*, 15 *D. and B.* 960, it was held, that, prior to extract, avocation is the proper mode of procedure.

[*Lord Cottenham.* — All these authorities apply to cases before the inferior courts according to the ordinary forms. The statute here makes the proceeding very different, and gives most rapid execution.

*Lord Campbell.* — In these cases the court that grants avocation can do all that the inferior court could do.]

2d, But at all events, after the jury had been sworn, and charged with the matter in dispute, and were bound to discharge themselves by a verdict, it was wholly incompetent to interrupt the procedure by any course whatever, whether by avocation or suspension. The authorities upon this subject in the law of

---

 REDDIE *v.* TODD. — 24th June, 1842.
 

---

Scotland are few, but the objection is rested upon principles of expediency common to all rules in administering justice, and the cases in England are numerous in support of it; *Lismore v. Beadle*, 1 *Dowl. N. S.* 566; *Lawrence v. Wilcock*, 11 *Ad. and Ell.* 941; *Lycett v. Tenant*, 4 *Bing. N. C.* 168. No possible inconvenience or injury could have been sustained by allowing the jury to give their verdict, as after they had done so, relief would still have been open by suspension.

[*Lord Campbell.* — I suppose, upon receiving the notice in the letter of 17th September, 1840, they might have applied by suspension?]

We apprehend so. And, 3d, Even if the proceeding were unobjectionable upon the grounds stated, the respondents were precluded from taking it by having accepted the notice of intention to proceed under the statute, and by having concurred in all the proceedings throughout to the moment of the jury being about to be sworn. This concurrence they entirely concealed in their application for the suspension. Proceeding by interdict is strictly analogous to injunction by the Courts of Equity in England; and it is an established and every day recognized principle of these courts, that a party wilfully suppressing part of his case, shall not obtain the interposition of the court, or be allowed to sustain his injunction, if he may have obtained it.

[*Lord Chancellor.* — But the Court below, taking the statement you gave them, disclosing what you say had been concealed from the Lord Ordinary, still say we see no ground to disturb the interdict.]

II. The entry of Todd's name, in the schedule to the statute, as superior, and of Wingate's as vassal, shews distinctly, that the rights of Todd, as superior, were intended to be comprehended within the terms of the statute. But independently of this, rights of superiority must come within the interests which the appel-

REDDIE v. TODD. — 24th June, 1842.

---

lants are empowered to purchase. If they could purchase only the title of vassals, their purchase would be liable to be defeated at any time. The portion of ground required by them in this instance was small in extent, but it may be a part of a much larger portion, which is subject to a variety of mid-superiors, and to payment to them of feu-duties exceeding by ten times the value of the *dominium utile* of the lands taken by the appellants. For these feu-duties the mid-superiors will have a claim paramount to any right which the appellants can acquire.

The statute intended to give power to purchase every pecuniary interest, and all that was meant by the reservation in the 92d section was a reservation of the rights of franchise and other like rights, collateral to that in the land itself, existing in the crown vassals, or subject superiors.

*Mr Solicitor General and Mr Kelly*, for the respondents, were not called upon.

LORD CHANCELLOR. — We are not called upon in this proceeding to pronounce upon the construction of the act of Parliament, but if we entertain reasonable doubt upon what that construction is, and we do entertain that doubt, then we are called upon to consider the other point. If the question with respect to the construction of the act of Parliament were clear, and the Sheriff had no jurisdiction to proceed in this case, his proceeding not being warranted by the act of Parliament was not a valid proceeding, and if so, then the whole is illegal. I am of opinion that the party had a right under such circumstances to apply for a suspension, and therefore I, for one, am of opinion that this judgment ought to be affirmed.

*Lord Cottenham*. — With regard to the right of the party to apply to the Court of Session to interdict the Sheriff from proceeding to assess the damages, that is beyond all doubt. The

---

REDDIE v. TODD. — 24th June, 1842.

---

only objection made that is really worthy of consideration is, whether the parties are to fail in their application because they have not made it sooner. Now, it appears that there is no doubt they had notice of what the Trustees of the Navigation intended at an early period, when they took the course of applying to the Sheriff; and the question is, whether the matter having proceeded so far, it should have been left to the assessment of the Jury, the Sheriff having decided against the respondents. It certainly would have been better if the party objecting to the value of the superiority being assessed, had previously applied to the Court of Session; but I think that if they were entitled to apply, there is nothing in the objection of their having applied so late, arising out of the circumstance of the Jury having been summoned. If the Sheriff had no jurisdiction in the matter, the proceeding which took place would have been informal. If we were now to reverse the order of the Court of Session, the effect of that would not be very beneficial to either party, because the question remaining to be discussed as to the discharge of this order, farther proceeding before the Sheriff would be followed by an immediate application for another order. I am of opinion that there is no sufficient objection to the course which has been taken.

*Lord Campbell.* — I think it was highly proper that this question with regard to the construction of the act of Parliament should be raised; and I think, certainly, that the application by suspension was the proper mode of doing that. My only doubt is, whether the respondents have not precluded themselves by their acquiescence. There was a notice on the 17th of September, and again on the 19th of October, that a jury should be summoned to assess, and they certainly might then have given the other party notice of the application intended to be made to the Court of Session. At the same time I agree in that which has been said, that we are now to suppose there is a question whether there was jurisdiction; and if there were no jurisdiction, then no



---

REDDIE *v.* TODD. — 24th June, 1842.

---

jurisdiction can be conferred, and it would be too late to make the application for the interposition of the superior Court, after the assessment by the jury. On these grounds, I think that the interlocutory judgment ought to be affirmed.

Ordered and Adjudged, That the petition and appeal be dismissed this House, and that the interlocutors therein complained of be affirmed, with costs.

RICHARDSON & CONNELL — ARCHIBALD GRAHAME, Agents.