ability. I think that *Taylor* v. *Strachan* was rightly decided, but that it is not in point, and I think the Lord Ordinary has taken an erroneous view as to its import in pronouncing the same decision here on a different state of facts.

LORD CRAIGHILL and LORD RUTHERFURD CLARK concurred.

The Court recalled the Lord Ordinary's interlocutor and decerned in terms of the conclusions of the summons.

Counsel for Pursuer—J. A. Reid—G. W. Burnet. Agents—Murray, Beith, & Murray, W.S.

Counsel for Defender—Comrie Thomson—Low. Agents—Davidson & Syme, W.S.

Friday, March 4.

FIRST DIVISION.

[Lord Trayner, Ordinary.

HUNTER AND OTHERS (OWNERS OF "AFTON") *v.* THE NORTHERN MARINE INSURANCE COMPANY (LIMITED) AND OTHERS.

Shipping Law—Insurance—Marine Insurance—Ship Insured "in Port" for Certain Time "After Arrival."

A policy of insurance insured a vessel from Java to any port or ports of call or discharge in the United Kingdom, . . . "and while in port during thirty days after arrival." She arrived at Greenock, was docked and discharged, and put for repairs into a repairing-yard situated between two of the Greenock docks. Repairs being completed, she on a day within thirty days of arrival went out of that dock to proceed to Glasgow in ballast to fulfil a charter, and was capsized by a gale at a place in the fairway of the Clyde opposite to the West Harbour of Greenock. *Held* (*diss.* Lord Shand) that she was not at the time of the accident in the port of Greenock as the meaning of that expression was understood among business men, but had left the port of Greenock in the prosecution of a new voyage, and therefore that she was not at the time covered by the policy, and the underwriters were not liable on it.

Opinion (*per* Lord Trayner) that when she left the dock to be put into the repairing-yard, she left the port in the sense of the policy, and ceased to be covered thereby.

Tests for determining the meaning of the word "port" considered.

This was an action by David Hunter of Ayr, shipowner, and others, registered owners of the ship "Afton" of Ayr, against The Northern Marine Insurance Company (Limited) and others, underwriters, who had undertaken policies on the vessel and her furniture, &c., in which the pursuers sought to recover the amount of damage sustained owing to an accident which befell the vessel on 12th February 1885, as stated below. The question in dispute was whether the vessel was covered by these policies at the time when the damage occurred. The policies of insurance (which were three in number) were, so far as the question in this action was concerned, to the same effect. That executed at Dundee on 20th September 1884 may be taken as a specimen. It insured the "Afton," "at and from port or ports and/or place or places, in any order, in Java to any port or ports of call and/or discharge in the United Kingdom or France or United States, and *while in port during thirty days after arrival*" (including all risk of docking while in dock, and undocking and shifting docks as might be required at any time during the currency of the policy). These perils were insured against, viz., "seas, men-of-war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever; barratry of the master and mariners, and of all other perils, losses, and misfortunes."

The "Afton" sailed on the voyages covered by the policies, and arrived at Greenock on 22d January 1885, when she was berthed in the Victoria Harbour and discharged her cargo. She completed her discharge on 4th February. She was then under charter to proceed to Glasgow to take a cargo from there to Brisbane, but some repairs being necessary before proceeding on her new voyage, she was on 6th February taken into Caird's Dock (a private graving dock, not the property of the Harbour Trustees, but situated between the two Greenock docks) at Greenock for repairs. Upon 12th February, the repairs being completed, she left Caird's Dock in tow of a steamer, to be taken to Glasgow to fulfil her charter, and on the same day, while in tow, she capsized and sustained the damage sued for. The *locus* of the accident was a place in the fairway of the river Clyde opposite to and within a short distance of Greenock Harbour.

The question whether the "Afton" was or was not covered by the policies at the date of the damage depended upon whether or not she was within the "port of Greenock" when the accident occurred. The pursuers averred that the "port of Greenock," "in the ordinary commercial sense of the term, and as known in mercantile and maritime custom and usage, embraces that part of the river Clyde, or estuary thereof, which lies between White Farland Point on the west and Garvel Point on the east, and from the shore or south bank of the Clyde on the south to and including the said sand-bank on the north, and in any event it embraces and includes the place where the "Afton" capsized."

The defenders denied that at the time of the accident the "Afton" was in the port of Greenock. They averred that she was then in the navigable channel of the Clyde; that she had left the port of Greenock, and was on a voyage from Greenock to Glasgow, and was not covered by the policies founded on.

The defenders pleaded, *inter alia*—"(3) The vessel not having been covered by the policies founded on when the loss occurred, in respect (1st) she was not then in the port of Greenock, *et separatim* (2d), whether in the port of Greenock or not, she had entered on a new voyage from Greenock to Glasgow, the defenders should be assoilzied."

The Lord Ordinary allowed the parties a proof.

The pursuers' parole evidence was that of men of business in Greenock, who deponed that in ordinary commercial language the port of Greenock included the place in question, but the witnesses were not agreed as to the limits of the port. The witnesses for the defenders were to a large extent Glasgow men of business, and they restricted the term "port of Greenock" strictly to the artificial works.

The documentary evidence consisted of various charters and Acts of Parliament from 1636 to 1886. The more important portions both of the evidence and charters are referred to and quoted in the opinions of the Lord Ordinary and their Lordships of the Inner House.

The Lord Ordinary (TRAYNER) assoilzied the defenders.

"*Opinion.* — [*His Lordship stated the facts and contentions of the parties as already detailed, and proceeded*] — The parties were agreed that the words 'port of Greenock' must be taken in their popular commercial or business sense, *i.e.*, the meaning and sense in which they are understood and used by persons resorting to or doing business in the port (*Garston Co.* v. *Hickie*, L.R. 15 Q.B.D. 580. A proof was accordingly led before me as to what was included in the 'port of Greenock' in the sense I have explained. The pursuers' witnesses, speaking generally, supported the pursuers' averment above quoted; some of them indeed went beyond the averment, and carried the port of Greenock very nearly as far north as Roseneath. That, I think, is extravagant. It throws, however, some doubt on the value of the testimony which these witnesses gave. On the other hand, the witnesses for the defender, again speaking generally, confined the port of Greenock to the works constructed by the Harbour Trustees, and all agree in excluding from the 'port' the fairway of the Clyde between the harbour of Greenock on the south and the sand bank on the north, in which fairway the 'Afton' was at the time she capsized. The result of the evidence was to satisfy me that there was no general or undivided opinion among mercantile or nautical men as to what was meant by or included in the words 'the port of Greenock.' This matter, however, had never before been considered by the witnesses; there had been no occasion for considering it. While, therefore, on the evidence I cannot affirm the averments of the witnesses, I am not simply on that ground prepared to find for the defenders. It is of importance to inquire whether, mere opinion of witnesses apart, the *locus* in question presents those features which mark a port. Is it a place where vessels usually load or unload cargo? Is it a convenient or suitable place for loading or discharging cargo? Is it in fact used as a part of the port? Do the harbour or port authorities exercise any jurisdiction there?

"I think it will be admitted that the place where the 'Afton' capsized is certainly not a convenient place for loading or discharging cargo. In the fairway of the river Clyde, where so many steamers are constantly passing, it is obviously neither a convenient nor suitable place for such operations. Nor can it be said that the place in question is one at which, in the present day, vessels usually load or discharge cargo. Formerly indeed, it appears from the proof, vessels did load and discharge there, at least partially. The pursuers' leading witness Mr Campbell may be taken as the most favourable for the pursuers on this point, and his evidence is to the effect that thirty or forty years ago he saw vessels loading and unloading in the fairway'; he has seen this done occasionally at a more recent period; he cannot say when he last saw it, but he has seen it within 'the last few years, but it has not been frequent since the deeper harbours were made.' No other witness speaks to the discharging or loading of vessels in the fairway at so recent a period, and although it may be true that Mr Campbell has seen this within the last few years, the rest of the evidence clearly establishes to my mind that the place in question has not been a usual place of discharge for at least thirty or forty years. But what was usual thirty or forty years ago, and not usual since that date, can scarcely be taken as entering into the meaning and intention of the parties who made the contract of insurance in 1884 or 1885. There is a good deal of evidence to show that vessels have loaded and discharged their cargoes or a part of their cargoes at the Tail of the Bank from early time down to the present. That does not appear to me to aid the pursuers. The Tail of the Bank is not the *locus* in question. It is not in the fairway, and even if it had been proved to have been in the mercantile sense (as I think is not proved) a part of the port of Greenock, that would not have aided in the solution of the question now to be determined. I come to the conclusion, therefore, that the *locus* of the accident to the 'Afton' was not a place where vessels were usually loaded or discharged.

"Did the harbour or port authorities exercise any jurisdiction there? Formerly at this place there were buoys to which vessels sometimes moored, although the buoys were chiefly for the purpose of aiding vessels in warping into or out of the harbour. Vessels using these buoys for either purpose were sometimes charged anchorage and river dues. The claim for these dues was always made, was sometimes paid and sometimes not paid, but the right to make the claim was always disputed. These buoys do not seem to have been used since 1868, if they were used so long, so that for about twenty years no dues have been even claimable. The evidence as to the exercise of any other power or jurisdiction is, I think, dependent on the evidence of one witness, who says that the harbour-master of Greenock ordered vessels out of the fairway, and 'pushed them further out to the Tail of the Bank so as to keep the fairway clear.' He states, however, that the harbour-master's right to give such orders was disputed. No special case of this kind is given, and the present harbour-master is not examined. I cannot regard this as evidence of the exercise of such jurisdiction as would fairly lead to the inference that the place concerning which it was exercised was within or formed part of the port. I should rather conclude that such acts on the part of the harbour-master as are above spoken to were acts performed under the authority of the 139th section of the [Greenock Harbour] Act of 1842 [which enacted that it should not be lawful to anchor any vessel in the mouth of the harbour so as to occasion any interruption to the free ingress and egress of vessels, and that the Harbour Trustees might require a

vessel so anchoring to remove]—a clause which appears to me rather difficult to reconcile with the idea that the fairway of the Clyde was part of the port of Greenock under the jurisdiction of the port authorities.

"All the marks or tests to which I have alluded as indicating a port are thus found to be wanting in the case of the *locus* in question. I am therefore of opinion that the pursuers have failed to establish that the 'Afton' was within the port of Greenock when she sustained the damage in question.

"Even had I been of opinion that the *locus* of the accident to the 'Afton' was within the port of Greenock, I would still have decided in favour of the defenders on the construction of the policies. In my opinion the policies had expired before the accident had occurred or the damage been sustained.

"The 'Afton' was insured against damage on her voyage, 'and while in port thirty days after her arrival.' I think that must be read with this implied limitation, 'if she shall remain in port so long.' If she left the port before the expiry of the thirty days the policy came to an end. The mere fact of her return to the port still within the thirty days from the date of her first arrival would not in my opinion have the effect of continuing the policy in force or reviving it. I find this view stated by Mellish, L.J., in the case of *Gambles*, L.R., 1 Exch. Div. 145, where the policy was in effect the same as we have here. He says—'If the words had been simply "for fifteen days after arrival," then it might have been necessary to put some limitation upon them, because the underwriters could hardly have intended to be liable for a ship going out to sea within that time, but the express terms "whilst there" show that the stipulation is that the underwriter is to run the risk of what may happen to the ship while she remains in the port.' In this case the underwriters took the risk of what might happen to the ship while in port (*i.e.* the port of discharge) thirty days after arrival. This, as I have said, implies continuance on the part of the ship in port. If she continues or remains there for thirty days after arrival she is covered by the policy, but if she leaves sooner the policy expires. By leaving the port the vessel enters upon a new risk which the policy does not cover.

"Now, the facts bearing upon this view of the case are all admitted. The 'Afton' arrived on 22d January. She discharged her cargo in the Victoria Dock by the 4th February, and on the 6th February she left the dock and went to Caird's Dock or shipbuilding yard for repairs. That dock or shipbuilding yard 'is not the property of the Greenock Harbour Trustees,' although it is locally situated between two of the Greenock docks. In my opinion 'the Afton' when she left the Victoria Dock on the 6th of February left 'the port' in the sense in which these words are used in the policies of insurance. That the dockyard she went to was a Greenock dockyard does not appear to me to be of any moment. So far as the policy is concerned, and the risks covered thereby, it would have been the same if the 'Afton' instead of going to Caird's had gone to a shipbuilding yard at Ayr or Dumbarton. In Caird's she was as much out of the property of the Greenock Harbour Trustees as she could have been anywhere. She was not paying harbour dues. She was not under the protection nor the jurisdiction of the authorities of the harbour or port of Greenock. I put the case, whether, if the 'Afton' had gone to Ayr for repairs and afterwards on her way to Glasgow (still within thirty days of the 22d January) had met with her accident where she did, the pursuers could have recovered under the defenders' policies. I was answered that they could, because the vessel was in fact in the port of Greenock when the accident occurred, and the thirty days after her arrival had not expired, and I was referred to *Gambles'* case as an authority for this contention. The contention is, in my opinion, untenable, and not supported by authority. In *Gambles'* case the vessel had never left the port, but had merely shifted from one loading-berth to another. The question there was not as to the effect of leaving the port, but occupying the port continuously under different charters. The opinion of Lord Justice Mellish already quoted shows that he would have regarded the pursuers' contention as I have done, for if the pursuers' contention was sound the defenders' liability would have been quite the same if instead of going to Caird's Dock the 'Afton' had made a voyage to Ireland and returned to the place of the accident before the thirty days had expired.

"I am therefore of opinion that the defenders should be assoilzied—(1) Because the 'Afton' was not in the port of Greenock when the accident occurred out of which the damage in question arose; and (2) Assuming that the 'Afton' was in the port of Greenock when the damage was sustained, she was not then covered by the policies founded on by the pursuers."

The pursuers reclaimed, and argued—This was a voyage policy with a time policy adjected. In order to determine whether the defenders were liable it was necessary to fix the limits of the port of Greenock, as it was contended for them that at the time the accident happened the "Afton" had left the port of Greenock. Caird's Dock was within the port of Greenock, and it was impossible to say, as was urged by the other side, that because it was a private yard it was not part of the port. The place of the accident was also within the port of Greenock—*Gambles* v. *Ocean Insurance Company*, 6 L.R., 1 Exch. Div. pp. 8 and 141, and *Garston Ship Company* v. *Hickie*, L.R., 15 Q.B. Div. 580 were the latest cases in which the word "port" was defined. There were certain tests for determining whether or not a certain locality was within the limits of a port—1st, were anchorage dues exacted; 2d, was there a right of dredging in the fairway; 3d, had buoys been laid down; 4th, was there jurisdiction to prevent vessels throwing ballast into the stream. Tried by these various tests the place where the accident occurred was within the port of Greenock. The "Afton" had doubtless started on a new voyage, but she had not left the bounds of the port when the accident occurred.

Replied for defenders—1*st*, *On the documentary evidence*—It was shown by the charter of Charles I. to Glasgow in 1636 that Greenock was at that time within the port of Glasgow. By this charter the whole of the rights of the Clyde were given to Glasgow, while the "harbour" or "port" (the words were equivalent) of Greenock consisted of the artificial works and nothing else. The result

reached from an examination of the deeds was (1) that originally the whole Clyde was vested in Glasgow; (2) that about 1705 Greenock began to construct artificial works, which were thereafter described in the various charters as the "port of Greenock;" (3) all that was not expressly conveyed to Greenock remained to Glasgow. *2d, On the evidence*—The claim of the pursuer virtually included the whole fairway, so that if the contention of the other side was given effect to it would come to this, that a ship bound for any of the upper ports had to pass through the port of Greenock. This was too extravagant a proposition to be held sound. The present case involved the determination of the question what was understood in commercial circles to be the "port of Greenock," and the difficulty which the pursuer had to contend against was that no two of their witnesses were agreed upon the point. *As to the authorities cited by the other side*—The material distinction between them and the present case was that the vessels were admittedly within the port when the accidents occurred. In the present case the "Afton" had left Greenock for good and had commenced a new voyage. As to the tests of a port referred to by the reclaimers, one of the best tests was shelter, and it was impossible to say that the fairway of a navigable river was a place of shelter.

Authorities—Capper, L.R., 5 Q.B. Div. 163; *Bremner* v. *Burrell*, June 19, 1877, 4 A. 934; *Laird* v. *Clyde Trustees*, 9 Macph. 1882, 9 R. 710; Lowndes on Insurance, 88; Arnold's Marine Insurance, 408; *Houlden*, L.R., 17 Q.B. Div. 354.

At advising—

Lord President—This action is raised upon three policies of insurance upon the ship called the "Afton," belonging to the pursuers, and the question which we have to determine arises upon the construction of certain words contained in each of the three policies, but I take the policy first mentioned in the record alone, as they are all expressed in the same terms in so far as the words we have to construe are concerned. The policy is upon the cargo and also upon the hull and materials of the ship or vessel called the "Afton," "lost or not lost at and from any port or ports in Java, in any order, to any port or ports of call and discharge in the United Kingdom or France or United States, and while in port during thirty days after arrival." There is thus a policy of insurance upon the voyage, and there is also superadded to that a time policy after the voyage is completed, and while the vessel is in port, for a period of thirty days. It is not disputed that unless the loss occurs within thirty days after the arrival in port this time policy will not have any effect, and again it is not disputed that the time policy will not have any effect unless when the loss occurs the vessel is in port—that is to say, in a port of call or of discharge in the United Kingdom or France or the United States. It must be kept in view therefore that in framing this part of the policy the parties were not describing any particular port, but using words applicable to any port that the vessel or her owners might like to take her as a port of discharge.

The facts of the case are very clearly stated, as regards the more material of them at least, in the 11th article of the condescendence—"The 'Afton' sailed on the voyages covered by the said policies, and arrived at Greenock on the 22d of January 1885, where she was berthed in the Victoria Harbour, and discharged her cargo. On the 6th February thereafter she was put into Caird's Dock in that port for repairs, which having been executed, she came out of that dock on the 12th of that month, being towed by the tug 'Lord Elgin.' While being so towed on the said 12th February 1885 *in the port of Greenock*" (that is the averment of the pursuers, and that raises the point which we have to determine), "and within thirty days of her arrival at said port, and when opposite Messrs Caird's shipbuilding yard, or thereabout, she was struck by a gust of wind, which caused her to list heavily to port, and to capsize. She thereafter drifted on to the sandbank opposite the Custom House steamboat quay and the entrance to the West Harbour, her yards first striking the said bank." Now, it is only necessary to add to these statements of fact that the place where the accident occurred was in the very middle of the fairway of the navigable channel of the river Clyde opposite Greenock, and that the vessel was then in course of proceeding to Glasgow in ballast for the purpose of taking in a cargo of coal.

The contention on the one side is, that although she was in the fairway of the navigable channel of the river, and had commenced her voyage to Glasgow for the purpose of loading cargo, she was nevertheless still within the port of Greenock, and so within that provision of the policy of insurance to which I have called attention. The other contention—that on the part of the defenders—is that being in the fairway of the navigable channel in the prosecution of a new voyage, it is impossible to say that she was still "in port" within the meaning of the policy.

The Lord Ordinary has adopted that view of the case, and has decided accordingly that the vessel was not in a position to be covered by the policy. I agree with the Lord Ordinary, and I shall state very shortly the grounds upon which my opinion are based.

I think, in the first place, that the fact of the vessel being in the fairway of the navigable channel at the time, which we know to be a somewhat narrow channel for the enormous traffic which it has to accommodate, is quite inconsistent with the notion that the vessel was still in port. It seems to me to be a contradiction in terms to say that a vessel is in the navigable channel of a river, prosecuting a voyage up that river to a port above, and yet to say that she is still in the port in which she discharged her cargo.

But then it is contended, and I think quite justly, that in determining what are the limits of the port of Greenock, we are to consider what would be considered as the limits of the port of Greenock by merchants, shipowners, and underwriters. We are not to ascribe any technical meaning to the words, but to take what may be called in the broad and popular meaning of the words "the port of Greenock."

Now, there has been a good deal of evidence led consisting of opinions as to what the limits of the port of Greenock are, and the whole of that evidence appears to me to be tainted a good deal with partisan prejudice. There has been a long standing feud or quarrel or jealousy between the Magistrates of Glasgow, as the Trustees of the

Clyde Navigation, and the Harbour Trustees and the town of Greenock, as to what the privileges of Greenock are, and the Greenock men are, of course, all on the one side, and the Glasgow men naturally, of course, are all on the other side, and the result of that, in my opinion, is that their evidence is of very little value. Besides, I must say that the observation made by the defenders' counsel as to the evidence of the witnesses for the pursuers is well-founded to this effect, that there is scarcely any consistency between the various witnesses adduced on behalf of the pursuers. No two of them fixed the same limits of the port of Greenock. Some of them extended the limits of the port to a most extravagant limit, and others again are more moderate, but all of them, no doubt, do maintain that the limits of the port of Greenock embrace the whole navigable channel of the river Clyde opposite to the harbour of Greenock. For these reasons I do not think it at all necessary to examine that evidence in detail, nor do I suppose that any of your Lordships attach any great importance to it.

But there is another class of evidence that has been appealed to, and some of it, I think, is equally of little value or consequence—I mean the historical evidence. If this question is to be determined as a matter of historical inquiry or research, I am afraid that we should be departing so far from what I understand to be the rule to which I have referred already, of taking the well-known meaning of the "port of Greenock" among the merchants, shipowners, and underwriters as the only rule that can determine this question, and therefore the historical part of the subject is, I think, of very little consequence.

But there is one part of that evidence, viz., a certain Act of Parliament which was passed in the year 1866 [39 and 40 Vict. c. 156], which throws a good deal of light upon the question before us. That was an "Act to consolidate and amend the Acts relating to the port and harbour of Greenock, and to authorise the construction of a new harbour and graving dock, and other works," and among other things the statute undertook to define what was the meaning of the expression "port and harbour of Greenock." The interpretation clause says, "the expression 'port and harbour' shall mean the port and harbours of Greenock as herein defined within which this Act shall be carried into effect."

Now, the clause defining what the port and harbour means is the 44th section of the Act, and is thus expressed—"The limits of the port and harbour shall extend to and include the whole works, lands, and property vested in and belonging to the trustees by virtue of this Act, or which shall, pursuant to the powers of this Act, be vested in and belong to the trustees." Now, it must be observed that this definition applies to the port of Greenock as well as the harbour, and it defines the nature of the property as being the "works, lands, and property vested in and belonging to the trustees." It appears to me to be clearly exclusive of the notion that any part of the navigable channel of the river Clyde, which is under the management of the Clyde Trustees by virtue of their Acts of Parliament can in any sense be "works, lands, and property vested in the trustees under this Act." The definition is entirely exclusive of such a notion.

But there is still further light to be had from this Act in regard to some of the schedules appended to it. There is the Schedule B, which deals with the matter of rates on vessels, and as regards coasting vessels we have this provision—"When a coasting vessel shall not commence nor terminate her voyage at the port and harbours, but shall only call at or enter or use the port and harbours, docks, piers, or other works of the trustees, on her way to or from Glasgow or any other port on the river Clyde, or within the above limits, such vessel shall be entitled in the same voyage to call at, enter, and use the port and harbours, docks, piers, and other works of the trustees on return to the original port from whence she started without again paying any rates." Now, here it will be observed that a vessel, though not commencing or terminating her voyage at the port or harbour, may call at, enter, or use the port and harbours. A vessel out in the mid-channel of the Clyde could hardly be calling at the ports, harbours, docks, piers, or other works of the trustees, on her way to Glasgow or some other port up the river. She might call in one sense that she throws off her steam, or comes to an anchor at the Tail of the Bank, or something of that kind, and have some communication with the port of Greenock, but the idea expressed in this schedule plainly is, that a vessel calling at or entering the port or harbour of Greenock is a vessel which comes within the artificial works of the harbour.

But still further there is Schedule C, which contains this regulation—"Goods shipped from the port or harbours to vessels in the stream, or at or below the Tail of the Bank by steamer or otherwise, to pay full rates of their class, whether river craft, coasting vessels, or vessels foreign, according to the port to which such vessels are bound." And the thing contemplated here and provided for is that a vessel may be at anchor outside the harbour works of Greenock and may desire to take in cargo there while lying at anchor, and how is this to be done? "By steamer or otherwise" from the port or harbour. The charge is to be made upon the goods shipped from the port or harbour to vessels in the stream by steamer or otherwise, and that means to every kind of craft. Is it not plain then that a vessel lying in the stream at anchor is not within the port or harbour because the goods are to be shipped from the pier or harbour to the vessel outside the port or harbour? I think it is.

The Act of 1866 accordingly leaves little room for doubt that the statutory limits of the port and harbour are consistent with the view which I have taken and which the Lord Ordinary has taken, and are quite inconsistent with the notion that the port extends any way beyond the artificial works which have been created.

But perhaps it may be said that this is departing again in some degree from the rule to which both parties have appealed, that we must take the popular meaning of the words "port and harbour," and not the statutory meaning, and there might be some force in that observation were it not for this, that these very regulations to which I have been appealing as showing the meaning of the statute are publicly exhibited upon the placards at every part of the port and harbour, so that it is quite impossible to discon-

nect these statutory limitations of the port and harbours from the meaning attached to them in ordinary life by persons interested in institutions of this kind, and therefore, upon the whole matter, I come without much hesitation to the conclusion that the Lord Ordinary has arrived at the right result, and that the vessel at the time the loss was sustained was not in the port of Greenock, but was in the prosecution of a voyage from Greenock to Glasgow, towed by a tug up the mid-channel of the river.

I do not think it necessary to advert particularly to another ground of judgment upon which the Lord Ordinary has relied, viz., that when the vessel was put into Caird's Graving Dock for repairs she ceased to be in the port of Greenock. There is a good deal to be said for that, for undoubtedly Caird's Dock is a private dock, and no part of the public works or statutory port and harbour of Greenock, and therefore may very fairly be said to be out of the port, and still more, considering that the object of putting a vessel into the Graving Dock cannot be done without taking her out of the water, and any vessel taken out of the water is hardly in a port in the ordinary sense of the term. But I make that observation merely in passing, and not for the purpose of founding upon that circumstance as a particular ground of my own judgment. I am for adhering to the interlocutor.

Lord Mure—I am also for adhering to the interlocutor of the Lord Ordinary.

I see his Lordship says in his note he has some difficulty as to the locality where the accident happened. I do not think that point is attended with much difficulty, for, as your Lordship has pointed out, the vessel at the time she capsized was in the fairway of the navigable channel of the river Clyde, and as I understand from the plans which have been furnished to us that the vessel had come out of Caird's Dock, and was crossing to the opposite side of the channel when she met with this squall which produced the accident, and looking at these facts, which I think are clear and distinct, they go very far to show that the view contended for by the pursuers is not one that can be given effect to, but, on the the contrary, to lead me to the conclusion that the defenders' is the correct one, viz., that when a vessel is in the navigable channel of a river, having just left the harbour of the adjacent town, she cannot be said to be still in port.

The evidence of the witnesses who have given opinions as to the limits of the port of Greenock is perfectly contradictory. I think in a case of this sort that it lies with the pursuer to show that the accident happened within the port of Greenock, but I should have great difficulty indeed in arriving at that conclusion on the evidence before us. I do not think the pursuers have proved that by their parole evidence. As I read the evidence of the pursuers' witnesses, the port is understood to extend for two miles along the river Clyde and along the navigable channel of the river from Whitefarland Point to Garvel Point. One leading witness for the pursuers, a Mr Walker, says that in addition to these two miles the port extends northwards from the north shore of Renfrewshire and goes almost over to Roseneath, which I suppose is three miles across. My view of the case is that it is impossible to hold that this port of Greenock can extend over all that navigable river from the shore on the south to the buoy at Roseneath on the north.

The evidence for the defenders on the other hand is quite adverse to that view, and it is sufficient I think, having regard to the extreme length of the pursuers' proof, to satisfy me that the pursuers' witnesses cannot be relied on as to the locality within which you have the port of Greenock.

Now, then, the evidence being so contradictory we must turn to the documents that have been laid before us, and amongst these I find the Act of 1866, and it I think is sufficient to solve the matter, and from it I am led to think that the port of Greenock is much narrower in its limits in every direction than that claimed by the pursuers. For these grounds I come to the same conclusion as the Lord Ordinary.

I do not enter upon the second ground of judgment, because I do not think it necessary for the decision of the case.

Lord Shand—Although I am so unfortunate as to differ from the opinions which I understand are entertained by all of your Lordships, as well as from the Lord Ordinary, I am unable to concur in the judgment to be pronounced.

Of course if it be rightly held that the port of Greenock—taking the expression in its ordinary commercial sense—is limited to the piers and harbour works of Greenock fronting the Clyde, there is an end of the question between the parties, for the pursuers' ship was capsized and stranded in the river at a short distance from and in front of these works. But I cannot agree with your Lordships in holding that the term "port or ports of discharge" in the policy when applied to the port of Greenock is to be taken in the very limited sense for which the defenders contend. If the expression "port of Greenock" relates to the port fixed for fiscal purposes, the limits of the port would extend over a large part of the river seaward from the town of Greenock. If again the expression were used with reference to the rating of goods and vessels, that is, to the charges or dues payable to the Harbour Trustees, it must be conceded that under the existing statute and regulations the port is limited to the docks, quays, and harbour works, for the use of which the dues are paid. But it appears to me that the term "port of discharge" in the policies in question refers neither to the port for fiscal purposes or dues, but must be taken in a larger sense; and that where the "port of Greenock" is referred to in a charter-party or policy of insurance, then according to the commercial sense of that term, the parties refer to that part of the river Clyde which the pursuers allege to be the port of Greenock, extending from Whitefarland Point on the west to Garvel Point on the east, and outwards from the shore so as to include at least the anchorage at the Tail of the Bank, and that part of the river and estuary which intervene between the bank and the southern shore on which the harbour works are built.

If, therefore, the pursuers' vessel in sailing towards the Victoria Harbour, in which she was unloaded at the end of her voyage, had stranded and been injured at the place where she capsized, and was run aground as described in the minute of admissions for the parties and relative plan, I

am of opinion that the injury would have occurred in the port of Greenock, although the vessel had not been attached to a pier or reached the inside of a dock; and I shall deal with the case as if the loss had occurred in this way in the first instance. It is obvious that the vessel on her way to the Victoria Dock must have passed over the very ground in question, and the accident which afterwards befel her might have occurred there. I shall afterwards consider whether the fact that the vessel was afterwards taken to Caird's Dock for repairs, and sustained injury after having gone out of that dock when she had started to make the passage or voyage for Glasgow can make any difference. It is to be observed that Greenock is one of the largest maritime or river ports in this country, having a very extensive shipping trade, and that a large number of sailing-vessels and steam-vessels, great and small, and engaged in home and foreign trade, resort to the port and use the harbour, and that in particular there is a large foreign traffic constantly going on. The harbour works consist of a long stretch of piers or quays facing the river, with breaks in the quays at different parts admitting of vessels going to different harbours and shipbuilding yards, the names of which are to be found on the plan. The case is one which I rather suppose must be regarded as unique amongst important shipping ports in the kingdom, if notwithstanding the existence of a large expanse of natural bay in the estuary opposite the town and harbour works, with the admirable shelter which it affords, of which advantage is constantly taken by vessels anchoring for shelter and various other purposes, it shall be held that nevertheless a vessel has not reached the port of Greenock unless she has been attached to a pier or quay or has got inside the gates of a dock.

It has been laid down in several recent cases that the Court in construing the term "port" in a charter-party or policy of insurance must endeavour to reach that meaning which shipowners, merchants, and insurers would naturally attribute to it, taking the term in its ordinary commercial sense; and certainly in the ordinary and usual case such parties in using the term "port" do not mean to limit its signification to the piers, quays, and docks, or in speaking of a vessel arriving in the port, limit the expression to the case of vessels becoming attached to a quay or getting inside of a dock. A port usually includes the ground in front of harbour works used for navigation, and for shelter and anchorage, as well as for loading and unloading, or for partially loading or unloading cargoes. And if the natural situation of a port be such that there is an expanse of water fronting the harbour works—it may be to some extent land-locked, or forming a bay suitable for shelter—shipowners and merchants understand that the space is included within the port in the business sense in which they use the term, particularly where vessels have been in use to anchor and partially to load or unload cargoes opposite a town which forms a large commercial centre.

It seems to me from the evidence in this case that the expanse opposite to the town and harbour of Greenock, which I have already described, falls within the description of a port which I have now given. The evidence shows clearly that the port of Greenock, extending out into the river at least to the Tail of the Bank—and it may be even beyond that point to the north, though that question does not arise in this case—has been in existence and been recognised by charters and statutes for upwards of a century—that so early as 1772 anchorage, shore, bay, and river dues were levied from ships resorting to the bay at a time when the harbour works were of a comparatively trifling kind.

In 1816 a charter was granted to the Bailies and Town Council of Greenock of the sandbank "opposite the harbour of Greenock, from the point or part of the estuary of the river Clyde at the north-west side of the said harbour, called the Tail of the Bank, in a south-easterly direction across the bay, until it touches the point or opening at the east or Garvel Point called the Troughlet, for the purpose of building dykes upon said bank, and to that end of digging and gaining upon the same for the protection of the bay and harbour from the east and northwards, and for making it otherwise useful without destroying or injuring the navigation of the river Clyde." And in the same charter power is given to the Magistrates to enlarge the harbour, "and to erect and build other harbours within the space above mentioned, and to reclaim land from the sea for that purpose, and to apply to their use the anchorage, shore, bay, and river dues, and the other taxes and customs foresaid, to be paid by all kinds of ships and vessels which may come to the said harbour, or other harbours to be built as aforesaid." These terms, read with reference to the locality shown on the plan, to the large natural bay or estuary opposite the harbour, and with the light of the evidence as to the anchorage ground at the Tail of the Bank, and the long continued existence of buoys in the river for mooring vessels and warping vessels out and into the harbour, all go to shew that from a very early period the bay or estuary of the river at and opposite the town and harbour works of Greenock was recognised as a port possessing anchorage ground and shelter, which is the marked characteristic of a port. The evidence is clear and uncontradicted that down to the date of the Statute of 1866 not only were there harbour appliances in the river at and near the very place at which the Afton capsized or was run ashore, but that both at that part of the river and out as far as the Tail of the Bank there was a constant practice of loading and unloading vessels, until in more recent years dock and harbour accommodation with the requisite depth of water were provided. And even down to the present time there is a frequent discharge of part of timber cargoes and occasionally of sugar cargoes to lighten the ship. The witness James Marshall, a stevedore and lighter-owner, states that he is almost daily employed either in partially unloading cargo or filling up cargo for vessels in the bay out and and towards the Tail of the Bank, and the witness James Neil speaks to a large fleet of vessels within the last eight or ten years having unloaded a considerable amount of timber cargo there, and to another vessel laden with coke and iron being also so unloaded. Even in the regulations, Schedule C, appended to the Statute of 1866 the practice of loading up vessels at the Tail of the Bank is recognised as existing; for goods shipped from the harbour to vessels in the stream, or at or near the Tail of the Bank by steamer or otherwise, are subjected to certain rates there specified. It

further appears from the proof that when vessels for the port of Greenock arrive at the Tail of the Bank it is not unusual for the captain to discharge the crew and to employ stevedores, and it is his duty at once to report the arrival of the ship to the Custom House.

An important body of evidence to the effect I have now stated, adduced by the pursuers, would seem to leave no doubt that the bay of Greenock, outwards at least to the Tail of the Bank, must be held to be within the meaning of the "port of Greenock" in its natural and ordinary and commercial sense, unless there be very strong evidence to overcome this. I do not think any such evidence has been adduced. The witnesses who were examined on behalf of the defenders were mainly gentlemen in Glasgow, most of whom were defenders in the case, having underwritten risk in these very policies. But there are two witnesses, men of experience and of weight, who were also brought and examined by the defenders, and I may observe upon their evidence that I think it goes a very little way indeed to weaken the evidence which has been adduced by the pursuers. I refer particularly to the witness Mr Leitch, who had been for a large number of years a merchant and shipowner in Greenock, and Mr Carmichael, a merchant and shipowner in Greenock and chairman of the Chamber of Commerce. The first of these gentlemen undoubtedly says in answer to the direct question—"According to commercial and nautical understanding, what constitutes the port of Greenock?—(A) The quays and harbours." He is then asked this question—"Is there any understanding, so far as you know, among commercial or nautical men that the fairway between the bank and the harbour is within the port?" And the answer is this very broad one—"If the 'Afton' had anchored where she sank when she arrived with her cargo, and had tendered her cargo for delivery to the merchant, the merchant would not have taken delivery, but would have told the captain to bring his ship into the harbour." So that the view upon which this gentleman proceeds, evidently, in the testimony which he has given as to what is the port of Greenock, seems to be this, that the port of Greenock means some special port at which delivery must be taken by the consignee of cargo. Of course if that view were sound one must immediately arrive at the conclusion that you cannot be in port till you have reached a quay or berth, and if that is the view on which Mr Leitch proceeds it goes very little way indeed to shake the general evidence to which I have alluded. Then, again, the chairman of the Chamber of Commerce is asked the question how long he has been in Greenock, and he says he has been in Greenock all his life. He says he is one of the defenders in this action, and one of the underwriters. Then he is asked what constitutes the port of Greenock, and his answer is, "Where a ship can legally call upon a consignee of cargo to take delivery." That is obviously unsound, for it simply amounts to this, that nothing can be a port which is not a loading or unloading place with a quay and harbour appliances, and I need not say that no one can possibly give countenance to that view of the meaning of the term "port."

The point really most relied on in defence has reference to the provisions of the Act of 1866. If the question between the parties had arisen in in the year before that statute was passed, the conclusion, I think, must have been inevitable that the port of Greenock could not be limited to the mere harbour works. Can it then be said that by virtue of that statute the port in its ordinary commercial sense no longer includes the sheltering or anchorage ground or expanse of water which it formerly did; that by virtue of the statute the port has shrunk within the limits of the harbour works either suddenly in 1866 or by degrees since that date? Can it be truly said that this port has been diminishing in its area or limits since 1866, as larger and deeper docks admitting of vessels of draught of water were built; that in proportion as Greenock was increasing in its commerce, and growing in importance as a maritime port, the limits and extent of the port were diminishing, so that at the present day these include the breastworks on the river-side and the docks inside these? I am unable to reach that conclusion, and I think it a very strong and startling statement or argument that the Act of 1866 has had any such effect. I cannot think that the effect of the provisions of that statute has been entirely to change and to limit the meaning of the term "port of Greenock," as that term was previously understood in its natural and ordinary commercial sense by business men in the making of their contracts of charter or insurance. In the case of a sailing-ship (*Garston Company* v. *Hickie*) Mr Justice Wills preferred the expression "legal port" as the proper term to describe a port of departure of a vessel to the popular or ordinary or commercial or business sense in which the word is used by business men, and in this view attached very great weight—almost exclusive weight—to the elements of defined limits within which port dues were levied. But this view did not receive countenance in the Court of Appeal, for the Master of the Rolls, now Lord Esher, for reasons which strongly commend themselves to my mind, preferred what he called the "very good working definitions" given by the other terms in ordinary use above quoted. His Lordship there said—"Shippers of goods, charterers of vessels, and shipowners, what do all those persons in their ordinary language mean by a port? What they understand by the word is the port in its ordinary sense, in its business sense, in its popular sense, *i.e.*, the popular sense of such persons. Therefore, with the greatest deference to Mr Justice Wills, it appears to me that all these phrases are quite good, and that they all in substance mean the same thing. He seems to have been inclined to substitute the words 'legal port,' but with all deference to him, in my opinion that would not do. A 'legal port' might be fixed by an Act of Parliament about which nobody knows anything. It must mean a port which such persons as I have mentioned would be dealing with for the purpose of ships going to or from it carrying goods." And he goes on to enforce as the chief characteristic of a port so understood that the place be in itself a sheltered place, a place of safety, a natural port.

This passage appears to me to give the key to the fallacy which, I humbly think, pervades the argument for the defenders. They seek to set up a legal port as distinguished from a port in the ordinary business sense of the term, and they do so by reference to the provisions of the Harbour Act of 1866. Now, I do not doubt that the port as described in that statute is confined

to the harbour works, and that the only dues which the trustees are entitled to levy are for accommodation at these works, and for the use of the harbour appliances. It even appears further that any jurisdiction which the trustees can exercise in the river and bay *ex adverso* of the works is of a very limited nature, though this last statement must be taken with the qualification that the Greenock harbour authorities are represented on the Clyde Lighthouse Board and Pilotage Board, who are concerned with the works necessary to secure the free navigation of the channel, and their harbour-master, as a member of one of these boards, does exercise a certain control over the shipping in what I call the port. But all this—and the knowledge of all this—while it may define a "legal port" for dues or rating purposes, will not, as it appears to me, alter or affect the ordinary or business meaning of the words "port of Greenock" as used in shipping and insurance contracts. The truth is that there is one circumstance which fully explains the legislation of 1866, and entirely accounts for the limitation of the port defined in that Act for dues or rating purposes, and that is the position of Greenock on the bank of the river Clyde, which is the great highway to another port of even greater importance, the port of Glasgow. It is notorious that by artificial operations which have gone on for many years the river for 18 to 20 miles above Greenock has gradually been made navigable for the largest of sea-going steamers and sailing vessels. Vessels of very large burden have always been in use, more or less, in waiting for the high tide to anchor for a time at the Tail of the Bank, and to pass through the port of Greenock on their way up the river, and the evidence shows that disputes from time to time arose between the Greenock authorities and the Clyde Navigation Board at Glasgow, who have large powers and important duties in regard to the river, and between the Greenock authorities and shipmasters and others anchoring at the Tail of the Bank or unloading cargo, particularly as to the payment of dues. In the interest of all parties it was desirable to settle all such questions on a practical and permanent basis. Accordingly, about 1866, a sum of £20,000 was paid to the town of Greenock by the Harbour Board to buy off their claim for the anchorage, bay, and river dues which they had been previously in use to levy from time immemorial, and these dues were to be no longer exacted. The Harbour Trustees obtained power to make large additional docks and works, and their dues or rates were by statute raised and enlarged, and at the same time limited to charges for the use of their quays, docks, or harbour works and appliances, while the Clyde Trustees undertook the responsibility of maintaining the river channel and navigation. In this way the "legal port" in the sense of the port in which dues are charged simply for the use of harbour accommodation arose, and was defined by the statute, and such an arrangement was not only the natural, but probably the only practical one with a port like Greenock in an estuary of the river Clyde, having Glasgow higher up. The Greenock traffic paid dues as before, for though the anchorage, bay, and river dues were no longer levied, the harbour rates were raised. And even the traffic from Glasgow in this way produces a very large revenue, for the steamers for local, coasting, and foreign trade, and passengers constantly call in great numbers at the Greenock quays, and must produce a large revenue to the Greenock Harbour Trust.

All this, and the public notices of dues payable as port dues for the use of harbour accommodation and appliances on the quays and elsewhere, seems to me, however, to be beside the question as to what is the port of Greenock in a charter-party of a vessel coming from abroad or a policy of insurance of a vessel to "the port of Greenock, and while in port during thirty days after arrival." In short, I think, the statutory port for payment of dues or rates on goods or ships is not the port of Greenock in the sense in which I think merchants and business men use the term in their contracts, for that term refers not to quays, docks, and piers only, but to the large expanse of water having shelter and anchorage in the natural port which exists opposite or near the harbour in Greenock, as in all other important maritime ports or places.

Two of the unquestionable marks of a port are no doubt the levying of dues, and the unloading and loading of ships, and it may be that in the majority of cases the area within which dues are levied will be found to be co-extensive with the limits of the ports, using the term in a particular sense. But this cannot be stated as an invariable rule, and though there must be in every port a place of loading and unloading goods, in very few places, indeed, can it be said that the port does not extend greatly beyond such a place as, *e.g.*, take the case of the Cardiff Dock where the artificial cut and part of the river Tarff—a long way from the place of loading—is part of the port.

Accordingly, I am of opinion that the place in question where the "Afton" was injured was in the port of Greenock in the commercial and natural sense of the term. That place is directly opposite the centre of the town and the steamboat quay, which is much frequented, and on which the Custom House of the port is built, and apparently about 500 feet from the breast of the quay. I attach no importance to the fact that the place is in the fairway of the river. If the expanse of water forming the bay and extending out to the bank be within the port in the natural sense of the term, you cannot cut out the navigable channel and say that it is not part of the port though the land and water on each side of it is so. The river for miles higher up is within the port of Glasgow from bank to bank, and it would be absurd to say of a part in the centre buoyed off, it might be, as fairway or navigable channel, that this was not in the port. A similar illustration might be taken from the port of Newcastle, which I understand extends for miles from bank to bank of the river, with navigation going on higher up, and the Cardiff case is another illustration, for there a great part of the port seems to have been fairway. On this point it may further be observed that the policies cover the ship while in port during thirty days after arrival, including all risk of shifting docks. I put the case that after the "Afton" had partially discharged in the Victoria Harbour she had been required by the harbour authorities or the charterers to move to the west harbour or Albert Harbour to complete her discharge, what in that case becomes of the defenders' argument? Can it be maintained that as soon as the vessel got out of

the Victoria Dock into the river or fairway of the river she was out of the port of Greenock although merely on her way from one dock in the port to another, and if so, what meaning is to be given to the words "including all risk of shifting docks" in the policy. I should suppose that the very use of the term "shifting docks" in such a policy would convey to the mind of anyone thinking of a port on any river that the vessel must be taken out of one dock into the river, and along the channel or fairway of the river into the other dock, and if so, it is to me inconceivable that the parties should mean that the risk ceased and the vessel was unsecured in the river between the two docks because she was not in port, but that the policy should again revive as soon as she was taken inside of the stone breastwork of the harbour. This, however, is involved in the defenders' argument. Such changes of dock must occur daily in the port of London, and I cannot suppose that it has ever occurred to anyone that the vessel is out of the port when she sails along the fairway of the river from one dock to another. I have, on the grounds now stated, come to the conclusion that if the vessel had gone aground as she passed over the place in question on her way to the Victoria Dock, where she was discharged, the occurrence would have taken place in the port of Greenock. But she completed her discharge, was taken into Caird's Dock for repairs, took in ballast, and had emerged from the dock, starting on the passage to Glasgow to take in cargo there, when she capsized and went aground. It appears to me she was still insured, and that the defenders are liable under the policies. Engrafted on the voyage policy there is a time policy, "to any port of discharge in the United Kingdom, . . . and while in port during thirty days after arrival, including all risk of docking while in dock, and undocking and shifting docks, as might be required at any time during the currency of the policy." The Lord Ordinary expresses the opinion that the taking of the vessel into Caird's Dock destroyed the policy in the same way as if the vessel had gone to Ayr, or had made a voyage to Ireland and returned to the place of the accident before the thirty days had expired. In my view that is not so. It is true that the vessel when in Caird's Dock was not in a dock the property of the Greenock Harbour Trustees, nor paying harbour dues, but the question under the policy is, was she in the port of Greenock? If so, then the policy in its language covers the case. The parties must, I think, be taken to have had in view that the vessel might encounter severe weather, in which case repairs might be necessary, or the copper on the vessel's bottom might require to be cleaned, and if this were done in port within thirty days after arrival, I can see no ground for thinking that the risk did not continue. There are docks and shipbuilding yards in Greenock as in all other ports. Are not these in the ordinary sense of the term in the port if locally within the limits as generally understood? Caird's Dock is in the very centre of the harbour. If it is, as it seems to me, a dock or yard of and in the port of Greenock, so I hold the taking of the ship there for repairs did not bring the policy as a time policy to an end.

Finally, it is said that as the vessel left Caird's Dock on her passage to Glasgow, again the risk ended. That observation would be true if the vessel had left the port of Greenock, but not otherwise. In the case of the *Garston Company*, the vessel, which had cleared out at the Custom House and had proceeded towards the sea on her voyage to Bombay from Cardiff, had got down an artificial channel leading from the docks to the river Tarff, and about 300 yards beyond the junction of the channel with the river, when she came into collision with another ship. Lord Esher there said, referring to the case of *Rocklands* v. *Harrison*—"The final sailing from the port is not at the time when the vessel starts from the rivermost end of the port; it is not till she gets to the outer end of the port. Till then she has not sailed from the port; she is sailing *in* the port." So here, the parties in charge of the vessel had it in view to take her out of the port, and in a very short time, if no accident had occurred, she would have been out of the port, but she took the ground and was injured while she was still in the port, if I be right as to the meaning of that word in the policies. The loss occurred within thirty days after arrival. The vessel was still "in port," and the risk was therefore covered by the policy. It would be to add a new term to the policy, for which I see no warrant in its language, to hold that the risk terminated as soon as the vessel was unloosed and started from the dock to go to Glasgow though she was still sailing in the port of Greenock.

Accordingly I am of opinion that the pursuers are entitled to succeed in their demand, and that the case should be remitted to the average-stater to ascertain the amount of loss, under the minute of agreement of the parties.

Lord Adam—I concur in the opinion of your Lordship in the Chair and Lord Mure.

The Court adhered.

Counsel for Pursuers—Balfour, Q.C.—Salvesen. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for Defenders—Asher, Q.C.—Dickson. Agents—J. & J. Ross, W.S.

Friday, March 4.

SECOND DIVISION.

[Sheriff of Lanarkshire.

BRODDELIUS AND OTHERS *v.* GRISCHOTTI.

Bills of Exchange—Promissory-Note—Presentment without Stamp—Stamp Act 1870 (33 *and* 34 *Vict. c.* 97).

In an action for the value of a promissory-note granted abroad the note was produced duly stamped. The defender offered to prove it had been presented previously not stamped, and maintained that it was therefore null. Plea *repelled.*

Bills of Exchange—Sexennial Prescription—Promissory-Note Payable Three Months after Notice.

Where a promissory-note was made payable "three months after notice," *held* that the sexennial prescription did not begin to run until the expiration of three months after notice.