Argued for the respondent—The minute of agreement and copartnery, clause 8, referred to the expiry of the copartnery, not of the written contract. Clause 7, which provided for the termination of the partnership by the death of one of the partners, being obviously intended to be carried forward, it was absurd that clause 8, which contemplated another method of termination, should not similarly be carried forward. In *Neilson* v. *Mossend Iron Company, &c.* (*cit. sup.*) the clause of pre-emption provided for its exercise three months before the termination of the contract, and obviously could not apply to a partnership-at-will the termination of which was uncertain. The cases of *Daw* v. *Herring* (*cit. sup.*) and *Brooks* v. *Brooks*, 1901, 85 L.T. 453, were both similar to the present, both being instances of partnerships terminable by the effluxion of time.

LORD DUNDAS—The question in this case is certainly a short one, and does not lend itself to any elaboration of statement. The decision depends, as in each case of this sort it must depend, upon the construction to be put on the language of the particular instrument under consideration.

The pursuers maintain—I quote from a passage in the Lord Ordinary's opinion which I think it was admitted correctly describes their argument—"that on a sound construction of article 8 the only event contemplated is the actual termination of the contract on the expiry of the five years, and that upon that event having occurred the right to the option ceased altogether." That view appears to me to be unsound, and I am for my part entirely satisfied with the way in which the Lord Ordinary has dealt with the matter, and with the grounds upon which he has based his judgment. I find it unnecessary to say more than this, that I think the interlocutor is right, that the Lord Ordinary has proceeded upon the right grounds, and that neither Mr Constable nor his learned junior, who I am confident have said all that could reasonably be said in support of their case, has stated anything that should, in my opinion, lead to a contrary conclusion. I accordingly am for adhering to the interlocutor.

LORD MACKENZIE—I am of the same opinion. I have listened attentively to the argument of Mr Constable, and also to that of Mr Graham Robertson, and I am quite unable for my part to see any ground for differing from the conclusion at which the Lord Ordinary has arrived. Of course, as Lord Selborne points out in the case of *Neilson* v. *Mossend Iron Company*, 13 R. (H.L.) 50, the first thing to be done is to construe the clause in question; and considering the 8th article of this contract of copartnery, I am unable to find anything in it to exclude the idea that the right of pre-emption was to be carried forward. I think the present case is like the case of *Daw* v. *Herring*, [1892] 1 Ch. 284, but I do not think the case is like the case of *Neilson*.

LORD CULLEN—I concur. The complainers do not dispute the soundness of the rule stated in the passage quoted by the Lord Ordinary from Lord Lindley's work on Partnership, 8th ed., p. 473—"A clause giving a right of pre-emption is not in itself inconsistent with the incidents of a partnership-at-will, and is therefore as a general rule operative after the termination of the partnership originally contemplated."

It is true that in any particular case the right of pre-emption may be so specially conditioned as to be capable of exercise only at the expiration of the original contract, or it may be created in such terms as to show that the bargain of parties was that it should apply solely at the period of the expiry of the contract so as to exclude it from being carried into a partnership-at-will, but if the parties by the original contract do no more than simply agree that on a winding-up of the affairs of the partnership taking place, at its expiry the partner shall have the right of pre-emption as an alternative to open sale, I can see nothing to prevent the right being carried forward. As article 8 of the present contract seems to me to import no more than this, I am of opinion that the Lord Ordinary has come to a right conclusion on the matter, and that his judgment should be affirmed.

The Court adhered.

Counsel for the Pursuers (Reclaimers)—Constable, K.C.—T. Graham Robertson. Agents—Gardiner & Macfie, S.S.C.

Counsel for the Defender (Respondent)—Moncrieff, K.C.—D. P. Fleming. Agents—Bruce & Stoddart, S.S.C.

Friday, June 19.

FIRST DIVISION.

(BILL CHAMBER.)

M'CONNACHIE, PETITIONER.

Diligence — Arrestment — Process—Ship—Maritime Lien — Form of Process for Making Maritime lien Effective.

Where special application by petition is made by a person averring that he has a maritime lien over a ship, it is competent for the Lord Ordinary on the Bills to grant warrant to arrest the ship.

On 19th June 1914 Peter M'Connachie, writer, Greenock, presented a petition to the Lord Ordinary officiating on the Bills (Lord Anderson). He averred that he was the holder and endorsee of a promissory-note, dated 15th May 1914, for the sum of £850 granted by W. Grunberg, master of the German s.s. "Wm. Eisenach," for value received for necessary disbursements owed by his said ship at the port of Stettin; that the period of payment was ten days after arrival (or upon collection of the freight if sooner made) of the said ship at the port of Greenock, or any other place at which her voyage might terminate; that the said ship arrived at Greenock (where her voyage

terminated) on 11th June 1914, and was at present lying in the James Watt Dock there; that while accordingly the period of payment under the promissory-note had not yet arrived, the petitioner believed and averred that in order to defeat his maritime lien over the said vessel for the amount of the promissory-note the master had made the vessel ready for sea, and unless the vessel was arrested would proceed at once to sea; and that the petitioner had unsuccessfully applied to the master of the vessel and to the agents for the owners for payment.

The petitioner accordingly craved for warrant to messengers-at-arms to fence and arrest the said steamship.

LORD ANDERSON, on the ground that no such application had ever been granted in the Bill Chamber, reported the case to the First Division (LORD PRESIDENT, LORD JOHNSTON, and LORD SKERRINGTON).

In support of the application counsel for the petitioner referred to *Clan Line Steamers, Limited*, 1913 S.C. 967, 50 S.L.R. 771; and *Lucovich*, June 12, 1885, 12 R. 1090, 22 S.L.R. 729.

The LORD PRESIDENT intimated that the Court were of opinion that the Lord Ordinary on the Bills might competently grant the application, and that his interlocutor should be in the form of the interlocutor pronounced in the case of *Lucovich*.

The following interlocutor was pronounced:—

"The Lord Ordinary having reported the petition to the Lords of the First Division, on their instructions appoints the said petition, with a copy of this deliverance, to be served upon W. Grunberg, master of s.s. 'Wm. Eisenach,' and designed in the petition, and allows him to appear at the bar of this Court on Tuesday, 23rd June 1914, at 10 o'clock a.m., and lodge answers to this petition within eight days after service, if so advised: Grants warrants to messengers-at-arms to arrest the steamship 'Wm. Eisenach' *ad interim*, and that on exhibition of a certified copy of this interlocutor, and appoints the execution of arrestment to be reported to the Lord Ordinary within twenty-four hours." [No order was made for intimation on the walls and in the minute book, that not being the practice in the Bill Chamber.]

Counsel for the Petitioner—D. P. Fleming. Agent—Wm. B. Rainnie, S.S.C.

Friday, June 26.

FIRST DIVISION.

[Junior Lord Ordinary.

BAIKIE *v.* GOVERNORS OF KIRKWALL EDUCATIONAL TRUST.

Entail — Disentail — Debts Affecting Entailed Estate—Effect of Disentail—Entail Amendment Act 1848 (11 *and* 12 *Vict. cap.* 36), *secs.* 6 *and* 32.

A deed of entail bound the succeeding heirs to pay a sum of £200 per annum to a kirk-session, and also to pay certain annuities to other parties. In an application by an heir in possession to disentail the estate, the petitioner contended that the statutory effect of the disentail was to put an end to the obligation to pay the sums in question, for which, therefore no security need be made.

Held that this was not the effect of the disentail, and that accordingly the sums fell to be secured in terms of section 6 of the Entail Amendment Act 1848.

The Entail Amendment Act 1848 (11 and 12 Vict. cap. 36) enacts:—Section 6—"Where any heir of entail in possession of an entailed estate in Scotland shall apply to the Court of Session under this Act in order to disentail such estate, in whole or in part . . . he shall make and produce in such application an affidavit setting forth that there are no entailer's debts or other debts, and no provisions to husbands, widows, or children, affecting or that may be made to affect the fee of the said entailed estate or the heirs of entail, or, if there are such debts or provisions, setting forth the particulars of the same . . . and it shall be lawful for the Court to order such provision as may appear just to be made for such debts or provisions, or for the protection of the parties in right of the same, before granting the authority sought for in such application, or as the condition of granting the same. . . ." Section 32—"An instrument of disentail under this Act may be in the form or as nearly as may be in the form set forth in the Schedule to this Act annexed . . . and such instrument, when duly executed, and recorded . . . in terms of this Act, shall have the effect of absolutely freeing, relieving, and disencumbering the entailed estate to which such instrument applies, and the heir of entail in possession of the same, and his successors, of all the prohibitions, conditions, restrictions, limitations, and clauses irritant and resolutive of the tailzie under which such estate is held. . . . Provided always that such instrument of disentail shall in no way defeat or affect injuriously any charges, burdens, or encumbrances, or rights or interests, of whatsoever kind or description, held by third parties, and lawfully affecting the fee or rents of such estate, or such heir in possession or his successors, other than the rights and interests of the heirs substitute of entail in or through the tailzie under which such estate is held, but that all such