I therefore move your Lordships that we should answer both the questions put to us in this case in the affirmative.

LORD SALVESEN—I entirely concur with your Lordship, and on the same grounds, and I have nothing to add.

LORD ORMIDALE—I also concur.

The Court answered the questions of law in the affirmative.

Counsel for the Appellant — A. Brown. Agent—W. Marshall Henderson, S.S.C.

Counsel for the Respondent — Keith. Agent—Andrew Grierson, S.S.C.

COURT OF SESSION.

Thursday, December 8.

SECOND DIVISION.

[Lord Hunter, Ordinary.

OWNERS OF S.S. "ST CLAIR" v. OWNERS OF "AUDNY."

Expenses — Ship — Arrestment — Excessive Bail—Expenses of Bail Bond above Certain Amount.

In conjoined actions for salvage, in which the total claims amounted to over £46,000, arrestments were used and the ship was subsequently released on bail bonds amounting to £37,500. After a proof the Lord Ordinary (Hunter) awarded the pursuers a total sum of £4925, but found them liable to the defenders in the expenses of the bail bonds to the extent to which they exceeded £8000. On a reclaiming note the Court *affirmed* the finding of the Lord Ordinary.

Thomas Hamling & Company, Limited, Hull, registered owners of the steam trawler "St Clair" of Hull, *pursuers*, for themselves and as representing the master and crew of the vessel, brought an action against A. Pedersen, master of and as such representing in this country the ownership of the sailing vessel "Audny" of Christiania and the owners of the cargo, *defenders*, for payment of £10,000 for salvage services rendered to the defenders. Arrestments were used to found jurisdiction. Similar actions were brought by the owners of other vessels in respect of similar services rendered and the different actions were conjoined. Bail bonds to the amount of £37,500 were taken by the owners of the vessels.

On 20th July 1920 the Lord Ordinary (HUNTER) allowed the parties to the conjoined actions a proof of their averments and to the pursuers a conjunct probation.

The following narrative of the *facts* and of the import of the proof so far as relevant to the question here reported is taken from the opinion of the Lord Justice-Clerk — "Ten actions for salvage were raised against the Norwegian ship 'Audny.' Some of the pursuers arrested the ship, and only released the arrestments on an undertaking being given that the vessel would not leave until after adjustment of their claims. All the pursuers made large claims. These amounted *in cumulo* to over £46,000. The bail bonds, I think, totalled £37,000. The Lord Ordinary before the proof conjoined the actions with the proviso that any witness could be cross-examined by any of the parties. The proof occupied several days and in the end the Lord Ordinary found that all the pursuers had performed salvage services, and were entitled to succeed to a certain extent in their claims for salvage, but he allowed in each case very much less than what had been claimed. The proof was complicated by the fact that there were internecine disputes between the salvors as regards certain damages done to the 'Audny' in taking her into Aberdeen Harbour and as to the liability for these. The Lord Ordinary having heard counsel upon the evidence made his awards for the salvage services rendered. He then found the pursuers entitled to their expenses, which he modified in the way set out in his interlocutor, the modifications being in different proportions in regard to the different vessels, which shows that he had carefully applied his mind to the matter when he was in the full knowledge of the facts. He then remitted the accounts to the Auditor for taxation. Having disposed of the expenses the Lord Ordinary next dealt with a question which was raised on record in a passage to which we were referred in the action at the instance of Hamling & Company, who were owners of the 'St Clair' of Hull. Thereupon a proof was taken upon the questions raised in that answer. I do not know that the first witness, Mr Duncan, advocate, Aberdeen, gives much material evidence upon the point; but the second witness, Mr Sopwith, gives the charges which would be made in Norway. He was acting on behalf of the underwriters of the salved ship. He says—'The Norwegian banks' charge is 10s. per cent. per quarter—about 2 per cent. per annum—and they are not like bail bonds in this country. For the bail here I think the charge is 1 per cent. for an indefinite time, but the Norwegian banks charge the bail bond that goes on in continuity until the bail has been released, so that for every three months the matter is delayed there is another 10s. per cent.' Now it is quite true, as Mr Carmont said, that that only put before the Lord Ordinary the rates which would be charged in Norway and in London, the former being, I suppose, thought relevant because the salved ship is a Norwegian ship and the underwriters Norwegians. The English rule appears to be in the Order as in Roscoe's Admiralty Practice, Order 12, Rule 21 (*a*)—'A commission or fee paid to a person becoming surety to a bail bond or otherwise giving security may be recovered on taxation; provided that the amount of such commission or fee shall not in the aggregate exceed one pound per centum on the amount in which bail is given.'"

On 23rd February 1921 the Lord Ordinary

gave decree in favour of the pursuer for payment of £700, and in the other actions awarded sums considerably less than the amounts claimed, the total amount awarded being £4925. He further found the pursuers "liable to the defenders in the charges incurred in connection with the bail bonds or guarantees taken in security of their salvage claims to the extent to which the said bail bonds or guarantees exceed the sum of £8000."

Opinion.—[*After dealing with the merits*] — "I have already indicated that the 'Audny' was arrested, and that large claims were made against her by the owners of the salving vessels. Bail bonds or letters of guarantee were taken by the owners of the said vessels to the amount of £37,500. I consider that the bail demanded was exorbitant. It was said in excuse that the agents of the salvors did not know the value of the salved vessel, but I cannot look upon that circumstance as a satisfactory explanation for their action. In the case of the '*George Gordon*,' 1884, 9 P.D. 46, an action of salvage was brought by the owners of two tugs against a vessel of the value of £14,000. The action was commenced for the sum of £3000, and bail had been required and given for that amount. The Court awarded £450. Mr Justice Butt said—'Parties should not arrest a ship for an exorbitant sum, and if they do it is no excuse to say that the defendants did not, as it were, struggle to get free by applying to have the bail reduced, nor that the solicitors were ignorant of the facts of the case at the time of the arrest. Where it is possible they should ascertain the circumstances before the ship is arrested. The course taken in this case I will never sanction, and I therefore order that the plaintiffs do pay all the costs and expenses to which the defendants have been put by finding bail in the action.' In the case of the '*Marguerite Molinos*,' [1903] P. 160, Mr Justice Bucknill ordered the salvors to pay the bail fee above a sum twice the amount of the award. In the present case I order the salving vessels who got bail bonds or guarantees to pay the expenses connected therewith so far as in excess of £8000."

The pursuers, Thomas Hamling & Company, Limited, and certain others reclaimed, and argued, *inter alia*, with respect to that part of the Lord Ordinary's interlocutor which dealt with the expenses of the bail bonds—The Lord Ordinary had proceeded on English authorities which were appropriate in the English Courts but which did not apply in Scotland. In England the expense of procuring a bail bond was an expense of process and could be modified. In Scotland it was not an expense of process—*Ellerman's Wilson Line* v. *Commissioners of Northern Lighthouses*, 1921 S.C. 10, 58 S.L.R. 29; "*George Gordon*," 1884, 9 P.D. 46. The defenders could have presented a petition for recall and had the amount reduced. [The Lord Justice-Clerk referred to Roscoe's Admiralty Practice, 4th ed., p. 312, Order XII, Rule 21 (a), and note referring to "*The Numida*," (1885) 10 P.D. 158]. The only Scots case in which the English rule had been given effect to was *The Walker Steam Trawl Fishing Company, Limited* v. *The Mitre Shipping Company, Limited*, 1913, 1 S.L.T. 67, which was an Outer House decision.

Counsel for the respondents were not called on.

LORD JUSTICE-CLERK—This reclaiming note raises some curious questions—[*After the foregoing narrative*]—I think it was for the Lord Ordinary to decide, when the facts were all before him and he had adjudicated on the amounts to be awarded, whether the amount of bail was excessive or not. It is quite plain that he thought it was excessive, because he declares that the defenders are not to be liable for expenses of a bail bond beyond £8000. That seems, perhaps, a small sum considering the amount awarded, for they would have been entitled to get a bail bond of twice the amount awarded. But that was a question for the Lord Ordinary, and that is the amount that he has fixed. "In the present case," he says, "I order the salving vessels who got bail bonds or guarantees to pay the expense connected therewith so far as in excess of £8000." It is quite true that he has not fixed on any rate to be allowed or the gross amount which is to be given, because having pronounced that finding he continued the cause and granted leave to the parties to reclaim.

In Scotland there does not seem to me to be any rule of practice or statute law or Act of Sederunt which determines this matter. In a matter of this kind I confess that I would be slow to introduce a different rule into the Scottish practice from that which has been adopted in England. The English rule is not confined to people who actually become security to a bail bond, for it says "or otherwise giving security." I see no reason why solicitors who, with a view to accelerating business and the determination of the case, undertake liability in security of the claims made by the various salvors of a ship should not receive the same allowance as banks or guarantee associations get. After all, I do not think it needs proof that you cannot get security by way of bail bond or guarantee without paying a reasonable amount therefor. Therefore I think the Lord Ordinary was right in pronouncing that order which leaves it open for him, when the facts as to the total amounts charged are put before him, to determine the amount that should be allowed. It is not my duty to fetter the discretion of the Lord Ordinary in any way. He may think that the amount allowed in England was a reasonable amount to be allowed in Scotland. But in my opinion it is not possible to hold that the Lord Ordinary dealt in an inequitable manner with this matter in fixing the maximum amount allowable as he has done. I think it is sufficient for him, having in mind the amount of salvage bail claimed, and the amount of salvage awarded, to say, as he has done, that the guarantee or bail bonds exceeded what was necessary, and that the expenses in connection with the excess should be paid by the salvors. So far

as that part of his Lordship's interlocutor was assailed, I am for refusing the reclaiming note. If the Lord Ordinary were to give an exorbitant award, which of course I do not anticipate, there might be a reclaiming note against the amount actually given. But, in my judgment, the Lord Ordinary has adopted quite the proper course in making the finding, leaving the actual amount to be determined by him when he has heard the parties more fully on the facts than he did at the time when he pronounced the interlocutor.

[*His Lordship then dealt with a question which is not reported.*]

The result is that, in my judgment, we should refuse the reclaiming note as I think the Lord Ordinary was right as to the expenses of the bail bond.

LORD SALVESEN—The merits of this dispute are not before us, because parties have acquiesced in the respective awards which the Lord Ordinary has given them. I would only say that while the sums awarded at first sight seem small in proportion to the value salved, it must not be left out of view that in the course of the salvage, as appears from the Lord Ordinary's opinion, a very large amount of damage was done to the salved vessel through the fault of one or more of the salving ships. That circumstance, no doubt, very largely diminished the award to which these ships would otherwise have been found entitled. The only questions before us are relatively small questions, both of them perhaps raising questions of principle. Mr Carmont contended, and I think rightly, that the expenses of the bail bonds cannot be awarded as proper expenses of process. That was decided by us in the *Ellerman Lines*. But the Lord Ordinary has not dealt with these expenses as expenses of process. He has found the pursuers liable in these expenses in so far as they exceeded the amount required to secure a reasonable security by way of bail bond, and he has continued the cause in order that he himself may fix what the proper charge should be. And as he has been guided by the English Courts as to the principles upon which the excess will be determined, so, I have no doubt, he will derive assistance from the rules that prevail there as regards the rate which may be allowed. I say no more because the matter is open for decision by the Lord Ordinary, to whom the case must go back, for the reclaimers did not wait until the Lord Ordinary had an opportunity of fixing the amount which would fall to be awarded under his last finding.

[*His Lordship then dealt with a matter which is not reported.*]

I am accordingly of opinion with your Lordship that we should refuse this reclaiming note.

LORD ORMIDALE concurred.

LORD DUNDAS was absent.

The Court refused the reclaiming note.

Counsel for the Pursuers and Reclaimers — Hon. W. Watson, K.C. — Carmont. Agents—Beveridge, Sutherland, & Smith, W.S.

Counsel for the Defenders and Respondents — C. H. Brown, K.C. — Normand. Agents—Boyd, Jameson, & Young, W.S.

Saturday, December 10.

SECOND DIVISION.

[Lord Blackburn, Ordinary.

DANTE *v.* WALKER AND OTHERS.

Valuation — Valuation Roll — Finality — Failure to Appeal to Valuation Committee against Entry in Roll — Refreshment Stances in Public Park—Seasonal Let—Liability for Rates and Taxes—Action of Declarator and Interdict—Competency—Absence of Averments as to Inapplicability of Assessing Statutes—Relevancy —Valuation of Lands (Scotland) Amendment Act 1879 (42 *and* 43 *Vict. cap.* 42), *sec.* 6.

A town council leased to a restaurateur three refreshment stances in a public park. By the lease the lessee was permitted for five seasons extending over five years to erect kiosks for the sale of refreshments during certain permitted hours throughout the summer season of each year, but was bound to remove the kiosks at the termination of the lease. The lessee, having been entered in the valuation roll as tenant and occupier of the stances, appealed to the Valuation Committee, but only on the ground that the valuation was excessive. His appeal having been dismissed, he subsequently brought an action for declarator that he was not "tenant" or "occupier" of the stances in the sense and for the purposes of the Valuation of Lands (Scotland) Acts, and not liable to be rated or assessed in respect of the stances, and for interdict against the defenders proceeding to recover from him any rates or assessments in respect thereof. The Court (*diss.* Lord Salvesen) *dismissed* the action as incompetent and irrelevant on the grounds (1) that the pursuer had not appealed to the Valuation Committee of the burgh against his entry in the valuation roll, or given any reason for his failure to avail himself of the statutory appeal which was open to him; (2) that he had been properly entered in the roll seeing that he was tenant of the subjects under a lease, though for less than a year; and (3) that he had not averred on record anything against his liability under the Burgh Police Act and the Poor Law Act for the taxes complained of, or that these Acts, under which his liability to be rated was determined, were inapplicable.

The Valuation of Lands (Scotland) Amendment Act 1879 (42 and 43 Vict. cap. 42), sec. 6, enacts—"It shall be lawful for any person interested to complain to the commissioners of supply of any county or to the