Saturday, March 18.

OUTER HOUSE.

(Before Lord Jerviswoode.)

RANKING AND SALE OF ECCLES.

Prescription—Interlocutor—Ranking and Sale. Held that an interlocutor, pronounced in 1825 in an action of ranking and sale, ordering a claim to be lodged, had not prescribed in 1871.

In this case, which has been depending in Court since 1818, a singular and important point of practice arose. In 1822 an interlocutor was pronounced by Lord Alloway, granting decree of certification *contra non producta*. In 1825 Captain Barton presented a reclaiming note to the First Division, setting forth that he was a creditor of the common debtor to the extent of £500, contained in a bill, and craving to be reponed against said decree of certification. Their Lordships of the First Division reponed the claimant, and remitted the case to the Lord Ordinary to receive his claim and grounds of debt. Thereafter an inventory of interest was duly lodged by the Clerk of the Inner House, but in consequence of some oversight it was not transmitted to the Clerk of the Outer House process. No farther proceedings took place in the process until 1864. The original claimant died, and in 1871 his brother lodged a minute, craving to be sisted as a party in room of his deceased brother, and to be allowed to lodge in process the inventory of interest, in terms of the Inner House interlocutor of 1825. The common agent in the Ranking, Mr Martin, W.S., objected to the claim being received, on the ground that more than forty years had elapsed since the interlocutor of the Inner House, and that it and the claim then made were both prescribed, and that the claim could not now be received into process without the authority of the Court. It was, on the other hand, maintained that the action must be held to have originally depended before the Court, and that the interlocutor of the Inner House being an interlocutor in the cause, prescription could not apply. The Lord Ordinary repelled the plea of prescription, and admitted the claim.

Agent for the Common Agent—Mr Martin, W.S.
Agent for the Claimant—Mr Kennedy, W.S.

HOUSE OF LORDS.

Tuesday, February 28.

JOHN COPLAND *v.* HON. M. C. MAXWELL.

(*Ante*, vol. vi, p. 122.)

Landlord and Tenant—Agricultural Lease—Trout Fishing. Held (affirming judgment of Second Division of Court of Session) that a right of trout fishing in a private stream is an incident of the proprietor's right, and that it is not communicated to the tenant under an agricultural lease, unless that is done expressly.

This was an appeal from a decision of the Second Division of the Court of Session as to the right of farmers to fish for trout in streams passing through their farms. The respondent, Mr Maxwell, is proprietor of the estate of Terregles in Kirkcudbrightshire, and in 1863 he let a farm on that estate, called Mainshead or Prospect Hall, to the appellant for nineteen years. On the edge of the farm there is an artificial pond lying between the farm and other lands of the respondent. The pond had been made in 1849 to supply a tile-work, which had since been discontinued; and the respondent had stocked it with fish, chiefly trout, but there were also some parr and salmon. The pond is a mile from Mr Maxwell's residence. In the record the respondent set forth that he and his family had been in the habit of fishing in this pond, and that when he let the farm to the appellant for agricultural purposes only, he did not intend to include the use of the fishing of the pond to the tenant. But recently the tenant had begun to fish in the pond, and asserted his right to do so, and attempted to exclude the respondent and his friends from the fishing. On the other hand, the tenant, in his part of the record, stated that he had retired from business, and when he offered to take the said farm a plan of the lands then shown to him showed that the pond was part of the farm, that the lease contained certain exceptions and reservations, but did not reserve the pond or the fishings therein to the landlord; that he had, since he became tenant, constantly washed his sheep in the pond, and fished for the brown trout that frequented the pond; and the previous tenants had done so also. When he took the farm he had in view an agreeable residence, as well as an agricultural use of the lands; that the landlord cannot get to the pond without trespassing on the tenant's land; and therefore that the right of fishing belonged to the tenant. The proceedings commenced in the Sheriff Court with a petition of the respondent to interdict the tenant from fishing in the pond. The Sheriff-Substitute granted interim interdict. The Sheriff, however, on appeal, altered this order, and granted a proof of the averments. Another petition having been presented, there was an advocation. Lord Barcaple, after proof, pronounced judgment in favour of the tenant, holding that, as the lease did not specially except the fishing, the tenant had at common law the right to fish for trout with the rod in the pond. On appeal, the Second Division, consisting of Lord Justice-Clerk Patton, Lords Cowan and Neaves, reversed the interlocutor, holding that where such a lease is silent the right of catching trout in the streams belongs to the landlord, and not to the tenant. The tenant now appealed against the judgment.

The Lord Advocate (Young), for the appellant, said that the pond in question was only half-an-acre in extent. The evidence showed that the tenant had fished in this pond since his lease was granted, and he did not even profess to prevent the landlord from fishing if he did so without getting over and injuring the fences. There was no direct authority in the law of Scotland on the subject. It is true the law of Scotland gave the game to the landlord where the lease is silent; but that arose out of an old Scotch Statute forbidding all persons to take game who had not a ploughgate of land. But there was no such exception as to fishing or catching birds, or digging for worms, or taking any other benefit out of the land. The Lord Ordinary said the common law was in favour of the tenant, while the Inner House said it was in favour of the landlord. But nothing definite was known or decided one way or the other, and the most consistent doctrine was to assume that the tenant had the full use of the land for all lawful

purposes, except the landlord had specially reserved certain matters.

Mr MANISTY, Q.C. (with him Mr BRAND), also for the appellant, contended that it must be taken that the pond was part of the farm. It was only 300 yards from the house, and was used for the ducks and geese of the tenant, as well as for his cattle; and as catching trout was only one of the uses of the water, that right must have passed to the tenant along with the occupation of the land. The only exception in Scotland from a lease was that of game; but where wild animals were not included in the definition of game, such as rabbits and wild fowl, those belonged to the tenant. This showed that the general rule of law was that the tenant was presumed to have these uses of the land and water embraced within his lease.

SIR R. PALMER, Q.C., and Mr J. F. ANDERSON, for the respondent, were not called upon.

At advising—

LORD CHANCELLOR—My Lords, in this case the appellant complains of two interlocutors, one by the Sheriff-Substitute and the other by the Court of Session, interdicting the appellant from fishing in a certain pool or stream, whichever it may be called, which adjoins the property occupied by him under a lease or tack for agricultural purposes. The pond or pool is of this description—it is fed by small streams, those streams are said, in the evidence, to be occasionally absolutely dry in summer. It was originally a swampy place; there is some tradition, but there is no distinct evidence upon that subject, of its having been formerly a loch; but it was a species of swamp, and not of any great use to the person occupying the adjacent farm for agricultural purposes. It was let originally to Mr Herbertson, who is still alive, and who is a witness in the cause; and when it was so let to him originally it appears, as far as we can see, to have comprised the pond in question. That is a matter of some dispute: but at all events subsequent transactions make that dispute of very little importance.

In 1849, while it was thus occupied by Herbertson, the proprietor, the present respondent was minded to make use of this pool for the purpose of supplying certain tile-works which he had in another form, which marched on one side of the pond, as the farm now occupied by the appellant marched on the other side of the pond. He accordingly applied it to this use, and made certain arrangements for that purpose, putting down a certain hatch, or something of that sort, through which the pond was to be fed, and a certain dam was constructed. It afterwards occurred to him, before the year 1853, in the year 1852, that he would like to make use of this pool (which had been thus formed by means of the damming and the other operations which he had carried on in order to use it for the tile-work) as a receptacle for trout, and he accordingly put a grating at the issue of the pool, which pool would naturally otherwise issue into the unrestricted stream, finding its way thereby into the river Nith—he put a grating across that part of it which would prevent the fish passing down the stream, and he then took a number of fish, which he had collected for the purpose, and placed them in this pool. The fish, therefore, were so placed that in summer time they would have no exit whatever, inasmuch as there would be the grating to prevent their descending to the Nith, and the streams above which fed the pool would be dry. At other times when the streams were not so dry they might have the means of finding their way upwards, but down the stream they could not pass. He further, somewhere about the end of the year 1852, in order to secure this as a place for fishing, placed stakes at the bottom of the pool in order to prevent any fishing by means of a net.

In this state of things, a new tack was had of the farm, as an agricultural farm, by Mr Herbertson, the original tenant, and with him was associated his nephew Mr Richardson, who also gives evidence; and Herbertson's statement of the whole matter is this. He says,—"When this operation took place for the tile-work I made no objection, and whether the pool was to be taken as included in my tack or not, I certainly did not in the slighest degree intimate any dissent from the pool being dealt with in the way described—namely, being converted into that which would be useful for the tile-work, and afterwards being converted into that which would be pleasurable to the landlord, as a place in which the landlord might fish." And he says distinctly that from that time—that is to say, from the time when the pool was so appropriated—he did not consider that property as that which was subject to his tack, and further that he never had any desire from that time forth, nor, as he thought, had he any right, to interfere with the use to which he had allowed the pool to be appropriated—namely, to the use of a factory on the one hand, and to the use of a fish pond on the other.

Now, in that state of things, Herbertson and his nephew held the property for ten years, which I think was the length of the tack; and undoubtedly after he had permitted that to be done which was done, I apprehend that no law of any country would permit him to interfere with the uses to which he had allowed the pool to be appropriated. His impression was—I thought it was better occupied. Whether he meant in the strict technical sense of being occupied as a tenant occupies land I know not, but he said—"I thought it was better occupied than when it was simply a morass, which was of no use to me, and therefore from that time I conceived that I had done with the pool."

The nephew does not give evidence of exactly the same character. He is called by the appellant, and the nephew, in his examination in chief, says —"I fished in the pond several times." That "several times" turns out in cross-examination to have been three times in ten years. And on one single occasion only did any body else fish with him, a man of the name of Alexander, a joiner, who fished with him for about half-an-hour. That is the extent to which either the uncle or the nephew appear to have exercised any right or control over the pool in any shape or way except that both the uncle and the nephew seem to have made use of the pool for washing their carts, and I think for watering their cattle.

That being so, in 1862 the tile-work was given up altogether, and about the same time the place was re-stocked with fish, and was re-staked. So that the landlord clearly intimated his intention to exercise, and did exercise, those rights which he appears to have resumed over this property. When this was done the property was let to the present appellant, Mr Copland, in 1863. He was to take it (I think the expression is) "as presently possessed by the existing tenant." That is the phraseology

which is used in letting the property to him, and now, upon that state of facts, the question is, how far the appellant is justified in contending that he has a right to fish in this pool.

The learned judge, the Lord Ordinary, conceived that he had that right. The three learned judges who disposed of this case in the Court of Session each and all of them came to the other conclusion—namely, that he had no such right. That decision was not rested by all the learned judges upon precisely the same ground. Two of them took a twofold ground. First, that by the general law of Scotland it is not an accessory to an agricultural lease that the tenant should have the right of angling or fishing in the stream passing through the lands of which he has the tack; and secondly, that in this particular case, regard being had to all that had been done, whether you regard the property as included in the tack or not, the appropriation of this pool as a fish-pool had been permitted to proceed to such an extent by what had been allowed to be done with reference to it as to make the fish the subject of property. Passages were cited from Erskine's Institutes, and it was said that, according to the general rule of the civil law, the fish had been appropriated by placing them in the pool from which they had no escape in summer, and only a partial escape in winter, so as to make them the subject of property. One learned judge rested his judgment entirely upon what he conceived to be the general law of Scotland—namely, that the taking of a farm for agricultural purposes does not include the special right of fishing. But it appears to me that upon the second ground alone — without thinking it necessary for the purpose of this case to say more upon the general law, or in fact anything at all upon the general law where the other part of the case appears to me to be clear and decisive, it seems to me quite enough to say that, in the circumstances which here took place, it is clear that Herbertson, if he ever possessed the right at all of dealing with this pool for the purpose of fishing, entirely gave up that right when he allowed that to be done which I have described as having been done. The fish were clearly allowed to be appropriated as the fish of the landlord by those acts which took place, and having been so allowed, to be appropriated as the fish of the landlord; and the property having passed from Herbertson to Copland upon exactly the same terms and conditions as those under which it was held by Herbertson, Copland can no more take the fish than Herbertson himself could take them. It appears to me that, independently of the question of the general law, these fish are not in the condition of fish simply swimming in a burn in a state of nature, taking their course down that burn, but they are most distinctly fish within the principle laid down by Erskine, which applies to "fish in a fish-pond, or birds" (as he describes it) "in a volary." In the case of fish which have been caught for the express purpose of being placed in a certain pond, and which are confined at all seasons of the year, it is not because there is an exit for them in a particular direction during certain seasons of the year, and because they can at certain other seasons of the year move in another direction, that they cease to be impressed with that character of property which the exercise of dominion over them in this fashion confers upon the person who has so appropriated them.

During the argument the case was put of a person who keeps birds in an aviary. It is exactly the same thing—he allows them to fly out, and they return to their haunt to which they have become accustomed; and just in the same way, fish during certain seasons of the year naturally go where they have been at other times, and return to the place to which they have become accustomed, and from which they cannot pass at all downwards to the general stream.

It therefore seems to me that the decision of this case may well be rested, independently of the principle of general law, upon the circumstances and facts of the case as regards Herbertson's departure from any right or interest in the fish if any such he had, and that Copland, taking exactly the same position from him, is in the same condition as regards the appropriation of this property and the exercise of its rights by the owner. Therefore, my Lords, I am of opinion that in this case the interlocutors complained of should be affirmed, and that the petition of appeal should be dismissed, with costs.

Lord Chelmsford—My Lords, I entirely agree with my noble and learned friend. It is unnecessary, on the present occasion, to determine the general question as to the right of trout-fishing in ponds upon farms under lease, as between the landlord and the tenant, because it will be quite sufficient in this case, as it appears to me, to decide it upon its special circumstances.

The pond in question was formed in the year 1849, by consent of Mr Herbertson, the tenant, for the purpose of providing water-power for a tile-work belonging to the landlord. And undoubtedly, when that pond was originally formed, the landlord had a paramount right to the use of the water of the pond, with which the tenant could not interfere. The tenant had agreed to allow him that right, and to make whatever rights he might have as tenant subordinate to those of the landlord. The landlord afterwards, in the year 1853, stocked this pond with trout; he put up a grating for the purpose of preventing the trout escaping lower down; and he also, about that time, put down stakes to prevent persons fishing in the pond with nets. All this was done, either with the consent of the tenant, or, at all events, with his allowance and submission, and undoubtedly by it indicated the right and power of the landlord over that pond.

That was the state of things in the year 1853, when Herbertson the former tenant took a new lease. Now the question is, what that lease included? whether with that lease the right of fishing for trout in this pond passed to the tenant? It is very important to consider what had been done by the landlord, with the consent of the tenant, under the new lease of 1853 previously to that time. And undoubtedly, as far as the appearance of exclusive right in the landlord goes, that seems to have been ceded to him by the tenant. Then did this lease of 1853 give to Herbertson the right of fishing? We have not the lease of 1853 before us, but we have the evidence of Herbertson upon the subject, and he would know perfectly well what passed to him under that lease. Now he was asked in the first place, with regard to the original construction of the pond, "Did you give up all right to the ground whereon the pond was made?" —and his answer, I should say, is affirmative—"I was glad to see it better occupied than it was before." He then states the putting up of the

sluice—there was a key to the sluice, which was kept by some of Mr Maxwell's people—and he says, "I did not consider myself entitled to fish in the pond, far less to give leave to other persons." There we have the opinion of the tenant, and nobody can know better than he whether the right of fishing, which is the only question here, passed to him under that lease of 1853. It is quite unnecessary, upon the present occasion, to consider whether the property in the pond passed to the tenant. It is enough to say, that, according to the tenant's own construction of the lease which he received in the year 1853, he had no right of fishing in that pond.

Then the lease which is made to the appellant in 1863 is a lease "of the farm and lands of Mainshead and Prospecthall, as presently possessed by James Herbertson and Robert Richardson." Now what was "presently possessed by James Herbertson and Robert Richardson?" James Herbertson tells you that he, at all events, was not possessed of the right of fishing; and therefore, as only that passed to the appellant which was "presently possessed by James Herbertson," it is quite clear that the right of fishing did not pass to him under the lease of 1863.

Upon these short grounds I agree with my noble and learned friend that the interlocutors should be affirmed, and the appeal dismissed, with costs.

LORD WESTBURY—My Lords, it must not for a moment be supposed that I think—nor do I at all think—that it was the intention of my two noble and learned friends who have already spoken to cast the least degree of doubt or uncertainty upon the statement of the law of Scotland which is contained in the majority of these judgments now before us. I quite agree that the special circumstances of the case would amount to conclusive proof to this effect, that it would be impossible to hold that a right of fishing in this piece of water passed under the existing lease. But it might still be contended on the part of the tenant that although it did not pass, yet, as his land ran up to and bordered upon that piece of water, he would, in respect of the possession of his land, have a right to fish in the water. It becomes necessary, therefore, to apply one peculiar principle of the law of Scotland, namely, that an agricultural lease is so construed there as not to include, as passing to the tenant, a particular right which is not at all classed among agricultural purposes, or a mode of agricultural enjoyment of a farm. And I think that it is clearly established that by the law of Scotland a tack of an agricultural farm includes, of course, every right and every mode of enjoyment necessary for the purposes of the contract between the landlord and the tenant; but that, supposing that agricultural farm to contain pieces of land which border upon a running stream in which the exclusive right of fishing is in the proprietor, it never can be contended, consistently with the law of Scotland, that by reason of the tenant having a right to the agricultural enjoyment of the land bordering upon the river, he gets the right to use the river for another purpose, namely, the purpose of the enjoyment of fishing therein. I entirely subscribe to what is cited in this case from the treatise of a well known writer, Mr Hunter, who says: "The right of hunting, shooting, and fishing, and of exercising similar sports, subject to liability for damage, is also reserved *ex lege*." It does not stand in need of a special reservation; the law supplies that reservation.

Now I entirely concur also with the leading passages which state that principle contained in the judgments of the Lord Justice-Clerk and of Lord Cowan. The Lord Justice-Clerk says, "If the right (that is, the right of fishing) be incident to the property of the lands, as it is universally said to be, the tenant can only claim to exercise it on the assumption that it has been communicated to him by the proprietor." This thing, therefore, which is wholly independent of the agricultural enjoyment of the land, must be shown to have formed part of the tack or grant before an agricultural tenant can claim the right to this particular franchise.

So also it is said subsequently, and I think quite correctly, by Lord Neaves, who concurs generally with the Lord Justice-Clerk, "there is no property in trout in the burn any more than in the running water there." That is for the purpose of distintinguishing this case from the case of an ordinary fish-pond inclosed all round, where the fish may be said to be no longer feeding in a state of nature, and where the landlord or owner has unquestionably a property in them. "But the right to fish," Lord Neaves says, "is a privilege to the proprietor of the soil, and no stranger is entitled to take away the trout any more than he is entitled to ladle out the water. Such a right is not, in my opinion, let by an ordinary agricultural lease."

Independently, therefore, of the special circumstances of this case, though I quite concur with my noble and learned friends in thinking that they amount to sufficient proof that by the contract between the parties the tenant was not intended to have any enjoyment of the right of fishing, yet I am clearly of opinion, independently of those special circumstances, that in an ordinary agricultural lease of lands in Scotland, where those lands include a loch or a pond in which there is the enjoyment of fishing (I mean by the enjoyment of fishing, where there are fish which would yield enjoyment to a sportsman), or where the lands included in the agricultural lease border upon a river in which there is a right of fishing. I am clearly of opinion that in such an ordinary agricultural lease, independently of words of special grant or special enjoyment, the agricultural lease itself would not confer upon the tenant the right to the franchise of fishing, either in the loch, or in the pool, or in the running stream. If that be the correct law of the case (and I find nothing to bring it into doubt here, and it is undoubtedly asserted by the Lord Justice-Clerk and Lord Cowan as being the general law of Scotland, and it is not denied by Lord Neaves), I am of opinion that upon that ground, as well as on the special circumstances of this case, the decision of the Court below was right, and that this appeal ought to be dismissed, with costs.

LORD COLONSAY—My Lords, considering the history of this piece of water and the special circumstances of the case, it appears to me that the tenant has no right to fish in this pond. It was part of the farm originally let to Mr Herbertson, but during Herbertson's lease of the farm a change took place. The character of this piece of the farm was totally altered, it was converted into a pond for the use of the landlord—not at that time for fishing, but for driving the machinery of a tile work, and when that tile work ceased to be carried on, the landlord availed himself of the preceding position

of matters to convert this into a fish-pond. That was done with the full concurrence of Herbertson, and from that time forward Herbertson does not appear to have exercised or to have claimed any right of fishing in the pond, and the landlord and his family appear to have always used and exercised that right. The manner in which he used it is specified in the evidence, and the precautions which he took to preserve its character as a fish-pond are also set forth.

Now I see in these facts enough to satisfy me that the transaction which took place then, and what followed on that transaction, was a transference of this piece of land from the character which it had formerly possessed, of being part of the tenancy of the tenant, into a sheet of water which was in the entire occupation of the landlord. The fish were confined there; they were prevented from getting down, and it was to all intents and purposes a fish-pond. I therefore think that in the circumstances of this case the exclusive right of fishing there belonged to the landlord.

Upon the more general question which has been presented, there is no authority in the way of a decision in favour of the respondent. It is a very large question, and it is perhaps unnecessary to dispose of it in this case. At the same time, as it has been presented to us, it may not be proper to allow any idea to prevail that such of your Lordships as entertain a decided opinion upon it abstained from expressing it on account of any doubt with respect to the judgment which has been pronounced upon that question. My Lords, I am of opinion that the judgment which has been pronounced upon the general question was also a right judgment. It is true, I believe, that there is no direct decision upon it. I am not aware that the point has been raised before, but certainly there is no decision against that opinion of the judges, and the tendency of the writers, as far as we have them, is in favour of it. As to the general understanding which is referred to by the Lord Ordinary, that is an impression upon his Lordship's mind of which we have no evidence at all; and it rather militates against the existence of that impression when we find a writer of eminence, whose work has long been in the hands of the public, and who has carefully considered these matters, I mean Mr Hunter, laying it down the other way; and so far as I know no writer has stated the doctrine differently from Mr Hunter. I think that it is rather an extravagant proposition to hold, that in the case of an agricultural lease, which is silent as to the exercise of this right of fishing, it is to be contended that by the letting of the land to a tenant, the exclusive right of fishing in all the lakes and streams within the boundaries of an extensive farm belongs to the tenant. The Lord Advocate admitted that his argument must go to that length in order to sustain the general proposition—not to sustain this case (for that was not contended), but that the argument itself, pushed to its legitimate result, must come to that, namely that in all rivers within the bounds of the most extensive farms, the landlord has parted with his right of fishing to the tenant without any expression in the lease to that effect.

My Lords, there is, I believe, a difference between the principles upon which a lease is construed in Scotland and in England, for some things are held to be conveyed by a lease in England which are not held to be conveyed in Scotland. In England I believe the right of shooting is conveyed to the tenant by the lease unless it is excluded, but certainly that is not the case in Scotland. No express reservation of the right of the landlord is required in Scotland, but that right is held to belong to him; there are also other matters which belong to him. The general principle acted upon is this, What was this farm let for? Was it let for one purpose or for another? Did the landlord part with rights which are accessory to his right of property, but which have no connection whatever with the enjoyment of the land for the purpose for which the land was let? I do not think therefore that a tenant has the right of fishing in a stream, the property of the landlord, running through the farm, or in lakes which are in the farm. He has the enjoyment of the water for the primary uses to which water is applicable, and for which it may be necessary for the purposes of the farm, but the right to catch fish is not necessary for the purposes of the farm. Therefore I apprehend that the general doctrine which has been laid down in the Court below is the sound doctrine, and upon both points I think that this case must be decided against the appellant.

Interlocutors affirmed, and appeal dismissed, with costs.

Agents for Appellant—D. F. Bridgeford, S.S.C.; and

Agents for Respondents—Mackenzie & Kermack, W.S.; and

Friday, March 3.

LORD BLANTYRE & OTHERS *v.* THE CLYDE NAVIGATION TRUSTEES.

(*Ante*, vol. v, p. 552.)

Statute—Statutory Trustees, Powers of—Reparation—Nuisance—Clyde Navigation Acts—Riparian Proprietor. Where trustees were appointed by statute for the purpose of improving the navigation of a river, by deepening and widening and artificially confining its channel, and by other operations; and they and their predecessors had prosecuted this work for more than a hundred years under a series of statutes; and their subsisting act empowered them for the purposes of their undertaking "to dig or cut the soil, ground or banks of the said river, and soil, sand or gravel in the bed thereof, and to lay the same upon the most convenient banks of the said river,"—a riparian proprietor raised an action of declarator against them, seeking to have it found, *inter alia*, that they were bound to fill up the foreshore between the banks of their artificial channel and the original river's banks to the level of his adjacent lands, or at all events above the level of spring tides, by depositing thereon the stuff dredged from the river, or otherwise, in order to give him access at all times to the river, and to obviate a nuisance created by deposit from the tide upon the above mentioned parts of the foreshore, and occasioned as alleged by the operations of the trustees; and likewise brought a suspension and interdict against the trustees to prohibit them taking the soil and mud dredged from the bottom of the channel out to sea, instead of depositing it upon the adjacent banks with a view to making them up to the required level.