the casualty. The meaning of that provision clearly is, not only that the proprietor infeft is not to plead his implied entry by confirmation as a discharge of the composition, but also, that although at the date of the action there may be in life a vassal who has obtained the implied entry created by the statute, but has not paid composition, his successors, when infeft and sued for the casualty exigible from himself in respect of his own implied entry, shall not be entitled to plead in defence that the superior has in life a vassal already entered.

"On the whole, therefore, it appears to me that according to the sound construction of the statute (1) no casualty was 'due and payable to the superiors by Dr Combe at or prior to the date of the pursuers' implied entry on 11th November 1874; (2) that the casualty for which the pursuers were pursued, and which they paid in 1876, was the casualty exigible from them in respect of their own implied entry; (3) that the demand for that casualty was not made by the superior sooner than they were entitled to do so; and (4) that the said casualty is not one of the burdens of which the pursuers are entitled to be relieved by the defenders under the clause of relief in Dr Combe's conveyance.

"In conclusion, it may be well to point out that some serious inconvenience, if not absurdity, would result from giving effect to the pursuers' contention that the casualty in question was 'due and payable' by Dr Combe simply in respect of the entry implied by his infeftment. It is by no means an unlikely occurrence that two or more implied entries may take place without the superior demanding payment of a casualty, and all the vassals so entered may have died; yet, according to the pursuers, on each implied entry a casualty may have became 'due and payable,' so that all of these casualties would subsist as burdens upon the property simply because the superior had chosen not to demand them during the life of the respective vassals by whom they were payable. Suppose, for instance, that Dr Combe had died immediately after granting the disposition to the pursuers, then, if the pursuers' argument is right, the superiors would have been entitled to demand a casualty both from Dr Combe's representatives and from the pursuers as his singular successors. But such representatives are not the successors of the vassal in the lands, and they are clearly not within the scope of sub-section 4 of the 4th section of the Act. It is only the party who has succeeded a former vassal entered in the lands that is liable in a composition, and he is liable under the statute, not as for a debt of his predecessor, but as for a debt due by himself as the entered vassal in the lands and the singular successor of the predecessor. And it would be an absurdity to maintain, as the pursuers necessarily must maintain, that two actions for successive casualties are payable by one and the same vassal.

"On the whole matter, and for the reasons already stated, I am of opinion that the claim of the pursuers is untenable. It may or it may not, in a question like the present, be competent to refer to the original offer and acceptance, or to the subsequent and more formal minute of sale and agreement, as evidence of the arrangement of parties as to this composition. I have not in forming my opinion in anything given effect to these documents as evidence. But it is satisfactory to my mind to see from these documents, and particularly from the correspondence attending the consignation of part of the price to meet this claim, that the present demand of the pursuers, though I am satisfied that it has been made in good faith, was an afterthought on their part, and that the judgment now to be pronounced is in entire conformity with what both parties intended until within a few days of Martinmas term, viz., that the composition, payment of which might have been enforced by the superiors at any time between 1838 and Martinmas 1874, should be paid not by the defenders but by the pursuers themselves."

The judgment was acquiesced in.

Counsel for the Pursuer—M'Laren—Begg. Agents—Morton, Neilson, & Smart, W.S.

Counsel for the Defenders—Balfour—Low. Agent—John T. Mowbray, W.S.

HOUSE OF LORDS.

Monday, February 28.

STEPHEN *v.* AITON.

(*Ante*, vol. xii. p. 342.)

Property—Harbour—Statute—Private Act—Righ to beach Boats.

The fishermen of a sea-coast village were provided by the proprietor of the village with houses under tacks which fixed a certain rent, to include all dues connected with the fishery, the right of beaching the boats not being specially mentioned, although the habit and use was to beach the boats during the winter season on a certain piece of ground. In 1845 the proprietor obtained an Act of Parliament for the improvement of the harbour of the village, which *inter alia* authorised him to levy five shillings on all boats laid up for the winter season. He subsequently charged five shillings from each fisherman on that account, and this he did by dividing the slump rent which had formerly been paid under the tacks into specific portions—so much for house-rent and so much for the other dues, one item being five shillings for laying up boats. The village was sold in 1865, and the new proprietor continued the same system until 1874, when he asserted a right to exclude the fishermen from beaching their boats on the said piece of ground. In a suspension and interdict brought against him by the fishermen—*held* (aff. judgment of Court of Session) that they were entitled to use the said ground for beaching their boats, on payment of five shillings, until the proprietor provided them with another safe and convenient place, in respect that the right given by the Act to levy dues for beaching boats implied the obligation to provide ground for doing so.

This was a suspension by William Stephen and others, fishermen, residing in Boddam, a village on the east coast of Aberdeenshire, as individuals, and also as a committee elected by the fishermen of

Boddam, against William Aiton of Boddam. Interdict was asked against the respondent "from troubling, molesting, or interfering in any way with the complainers and the other fishermen belonging to the village of Boddam, in laying up for the winter season, beaching, or taking their boats above high-water mark at or near the harbour of Boddam, upon the ground coloured blue and green in the plan or sketch herewith produced . . . on payment of five shillings for each boat," in terms of Schedule (A) appended to Act 8 and 9 Vict. cap. 25.

Upon a proof it appeared that the fishermen of Boddam had from time immemorial been in use to beach their boats upon the ground in question. It further appeared that they had for more than forty years occupied houses on the ground of the proprietor of Boddam, and paid him a yearly rent. At first they had no leases, but in 1830, by agreement between the proprietor and the fishermen, sixty in number, the latter obtained a lease of twenty-one years of "the houses and yards possessed by the said fishermen respectively, together with the privilege of fishing for white fish, as presently possessed by them, and also of the scalps within the flood-mark for laying down their mussels and other bait, and also with the privilege of roads and accesses and of the rocks for laying down and winning their fish, as presently enjoyed by them." The rent was to be £1, 5s. for the first ten years, and £1, 7s. 6d. for the next eleven years.

In 1838, in consideration of an extension of the lease for seven years, and that a new harbour was about to be built by the proprietor, it was agreed that the rents should be raised 10s.

In 1845 the estate was purchased by the Earl of Aberdeen, whose successor sold it in 1865 to Mr Aiton.

In 1859 Lord Aberdeen obtained an Act (8 and 9 Vict. cap. 25) "for improving and maintaining the harbour or port of Boddam. The seventh section provided that it should be lawful for the Earl to demand certain duties for every vessel which should enter the harbour, and also "for all boats laid up at Boddam for the winter season, 5s."

It appeared that after the expiration of the fishermen's lease in 1858, they continued to pay a yearly rent of £1, 17s. 6d. until 1865, when Lord Aberdeen issued the following "conditions on which houses in the village of Boddam occupied by fishers are to be held, and dues for boats using the harbour, &c. Houses and boats as under, viz.,—Each house, yearly £1, 2s. 6d.; each herring boat fishing, 5s.; each do. beached, 5s.; each white fishing boat, 5s; each boat for light dues, 2s. 6d."

After Mr Aiton became proprietor the same system was continued, each fisherman paying 5s., for which receipts were granted as "beaching dues." In 1874 the respondent asserted a right to exclude the fishermen from beaching their boats on the ground in question. There was no other ground equally convenient, and this suspension was accordingly brought.

The Lord Ordinary (Curriehill) refused the suspension, but the First Division on 27th February 1875 recalled his interlocutor and found that the complainers were entitled to the use of the ground in dispute for laying up their boats in the winter season, on payment of 5s. for each boat, so long as the respondent should not have provided other safe and suitable accommodation for that purpose.

The respondent appealed.

At delivering judgment—

Lord Chancellor—My Lords, In the year 1845 the village of Boddam, on the east or north-east coast of Aberdeenshire, was owned by the Earl of Aberdeen. It had previously belonged to a Mrs Robertson Gordon, and before her to a Mr Robertson. It was a small fishing village, where a small but increasing herring fishery had been carried on. The herring fishery was carried on by fishermen who lived in the cottages composing the village, and your Lordships find that these cottages were let during the time of Mr Robertson on leases for 21 years, one of which is printed on p. 68 of the appendix, by which Mr Robertson agreed to let for 21 years the houses and yards possessed by the fishermen whose names were subscribed, "as presently possessed by them, and also of the scalps within the flood-mark for laying down their mussels and other bait, and also with the privileges of roads and accesses and of the rocks for laying down and winning their fish, as presently enjoyed by them." Then, under the second head there was a provision that the rent was to be £1, 5s. a-year for the first ten years, and £1, 7s. 6d. "for the next eleven years, in name of rent or tack-duty," "and in the event of the herring fishery being carried on at Boddam during the said lease, they agree to pay for each boat employed on the said fishery the one half the same rates and duties as may be payable at the time for the herring boats employed at Peterhead."

My Lords, later than this the lease for twenty-one years was extended by Mrs Robertson Gordon, who appears to have succeeded Mr Robertson, and in the extended lease, which is printed at p. 71, a term or holding of seven years was added to the original term, and a rent was laid upon the fishermen of 10s. in addition to the £1, 7s. 6d. which had been imposed by the first lease, so that the total rent became £1, 17s. 6d. And the third head of that tack ran in these words—"The said fishermen shall have right during the currency of the said lease to use the said pier or breakwater, and harbour and beach enclosed thereby, as well as the present harbour at Boddam, for the purpose of the herring fishing as well as for the white fishing, as occasion may require, without any dues being chargeable on them for their herring boats and other boats employed at the said fisheries at Boddam, and the said fishermen shall also have power to land thereat any description of goods and merchandise which they may have occasion to import, each for his own domestic purposes;" so that your Lordships observe that the rent being raised to £1, 17s. 6d. there was a stipulation for the use of the "harbour and beach enclosed thereby," whatever that might mean, "as well as the present harbour," that is, any additional harbour as well as the present, for the purposes of herring fishing, the sum stipulated to be paid, namely £1, 17s. 6d., being made to include any dues chargeable upon the fishermen for their herring boats and other boats employed in the fisheries. My Lords, that was the state of things upon the second instrument of tack or lease which is before your Lordships.

Then, my Lords, Lord Aberdeen became, as I have said, the owner, and the habit and use at this time of the fishermen is described in the evidence in the case. I will refer your Lordships to one witness, whose evidence will be sufficient for the present purpose, Andrew Stephen, who seems to be one of a family of Stephen Brothers who are fishermen at Boddam. He is referred to a map upon which two spaces of ground coloured blue and green are marked, which are the spaces of ground in dispute in the present proceedings. He says, "I see them;" "as far back as I remember there was no road there, and we beached our boats both on the blue and green ground." Lower down he says—"From the earliest time I remember we have been in the habit of drawing up our boats both on the blue and the green." Then further on he says—"I have never known the green and blue spaces used for any other purpose except beaching boats."

Your Lordships were referred to a statement on this subject made by the present respondents in their condescendence at p. 9, paragraph 11, in which they state—"From time immemorial prior to 1845 the fishermen of Boddam have been in use to beach their boats on the space marked blue on the plan produced, and during the same period it has not been used for any purpose except the beaching of boats during at least the winter season. The space marked green on said plan was originally a playground, and had been from time immemorial used as such by the villagers of Boddam, but on or about the year 1844 the space marked blue having, in consequence of the increase in the number of boats, become insufficient for the requirements of the fishing population, the said green space was converted by the Earl of Aberdeen into additional ground for the beaching of boats." My Lords, I think those two statements are easily reconcileable. The witness speaks of that which was in his recollection—that as long as he could remember the blue and green had both been used for the beaching of boats. The blue being the nearer to the water of the harbour, it would be used first and principally; and as soon, and not before, as it became filled with the beaching of boats, would it be necessary to resort to the green. It appears that the green was an unoccupied piece of ground—a playground—and that Lord Aberdeen, as soon as the blue became filled, authorised the green to be used in addition. Very possibly it had been, as the witness Stephen says, so used before, but the blue being sufficient, it would not until the time spoken of, namely 1844, be necessary to make any positive regulation as to the use of the green as well as the blue.

Now, my Lords, that being the state of things—a herring fishery existing at Boddam, where the fishermen are provided with residences in and about the village, and hold those residences under tacks which fix a certain rent, to include all dues connected with the fishery, and their habit and use being to beach their boats in the winter season, when their boats cannot be left in the water, but must be beached somewhere upon the two pieces of ground coloured blue and green—that, I say, being the state of things in 1844 and 1845, your Lordships will now turn to what took place in the latter of those years. My Lords, in the year 1845 the Earl of Aberdeen came to Parliament for the purpose of soliciting a Bill, which in the first instance assumed the shape of a private bill, but which was the foundation of a public Act, which must be judicially noticed as such, and must have all the operation of a public Act. In truth, when your Lordships look at this public Act, you find that it is an Act of the most comprehensive kind, establishing a public harbour, authorising tolls to be taken, and containing every clause which would be enacted with reference to the largest harbour in the Kingdom.

It provides for the entrance of foreign vessels, the dues to be taken from foreign vessels, the respecting, with regard to foreign vessels, of the rights and obligations of our treaties with foreign states; it authorises bye-laws to be made and penalties levied; and in fact, as I have said, it forms a complete code for the regulation of a public harbour.

My Lords, the preamble or introduction of that Act stated that Lord Aberdeen was the heritable proprietor of the village of Boddam, and "of the harbour or port of Boddam, and the piers and works therewith connected," and that "it would be of great advantage to the public, and especially to those using the said harbour, if the same were to be improved by deepening and enlarging the said harbour and the entrances and approaches thereto, and by extending the said pier and forming a breakwater; and whereas the said Earl and his predecessors, proprietors of the said village, have from time to time expended considerable sums in erecting the present piers and otherwise forming the said harbour," and the Earl was willing to make the improvements at his own expense, and in consideration of the expense which the Earl had already incurred and would incur in making these improvements, it was reasonable "that the Earl and his successors should receive the tolls, rates, and dues hereinafter mentioned." Then it stated that a map or plan had been deposited "describing the lines, levels, and situation of the harbour and the proposed breakwater and other works, and of the lands" on which they were to be executed. Where works had to be executed, of course it was necessary to describe them and to indicate the land upon which they were to be executed. The third section provided that it should be lawful "for the Earl and his heirs and successors upon the lands described in the said plan and book of reference, and according to the provisions herein contained, at such times and in such manner as he and they may judge proper, to make and execute the improvements and works in the said harbour, and erect and construct the pier and breakwater therein according to the lines delineated on the plan, "together with the excavations and all other works connected therewith, and also to make, build, alter, repair, and maintain within the limits aforesaid such quays, shores, piers, jetties, landing-places, and other works, and such approaches, roads, retaining-walls and embankments, and other works therewith connected, as he or they may think necessary for the purposes of said harbour." Therefore there was power given, not merely to execute particular works where the face of nature had to be changed, but also to connect with those structural changes conveniences and approaches, and such other accommodation as might be found to be necessary for the purpose in view. And

then the 7th section provided that the Earl might "demand and receive for every vessel which shall enter within the limits of the harbour any sum not exceeding the several rates and duties on tonnage specified in the Schedule (A)." When your Lordships turn to Schedule (A) you find that it is divided into two or three parts,—the first relating to "tonnage duties," which are specially mentioned; the second relating to "herring boats"—"For all herring boats engaged at the fishery at Boddam for the period of their fishing season, in lieu of all tonnage duties payable for such herring boats," so much. And then the third head is—"For all boats laid up at Boddam for the winter season, 5s."

Now, my Lords, in the first place, some question was raised with regard to the meaning of the words "laid up," but I think your Lordships cannot be of opinion that any controversy is possible as to the meaning of those words. In the first place, there is no evidence whatever that they have any meaning other than that which is assigned to them by the respondents here, namely, beached. In the second place, you have the admission of the appellant himself that it is impossible that herring-boats can be safely dealt with during the winter months except by "beaching." Therefore the laying up for the winter would mean beaching. But in addition to that your Lordships have the best possible testimony, *ante litem motam*, both from Lord Aberdeen and from the appellant himself. In the case of Lord Aberdeen, you find that in the conditions he issued to the tenants he used the term beaching as a term which properly described the work of laying up for which the toll or duty of 5s. was to be exacted. Therefore your Lordships will read the schedule as if it provided a fee of 5s. for the beaching of every boat that should be beached at Boddam in the winter season.

My Lords, that being the nature of the Act of Parliament, and the provision it contains with regard to toll, what is the consequence of it? Your Lordships have this state of things,—there was at the time the Act passed a herring fishery at Boddam; it was conducted by fishermen living in cottages provided by the proprietor, and paying a gross, or as as it is termed a "slump sum" for the cottage and for all the privileges which they had as fishermen. Then you have the Act of Parliament, which takes notice of that state of things, indicating the advantage to be derived from improving the harbour for, among other things, the purpose of the herring fishery; and then you have the person who is willing to undertake that work, who appeals to the Legislature for power to levy tolls as a remuneration for the work he was about to undertake. You have him stating that he asks for permission to charge a duty upon every herring boat engaged in the fishing for the privilege of passing in and out of the harbour, and also another duty of 5s. for every boat of that kind beached for the winter season; and he is the proprietor of the beach, and on that beach there are two places which at that very time were used for the purpose of beaching the boats of these herring fishermen. My Lords, is it to be heard that after this that person, who has obtained this Act of Parliament, or any person claiming under title from him, is to come before a court of law and say—It is true that I obtained these powers; it is true that I made this representation to Parliament; it is true that the herring fishery cannot be conducted unless the fishermen have the accommodation of laying up their boats upon the beach during the winter; it is true that I represented to Parliament that if the Legislature would allow me to charge 5s. for every boat beached I would maintain this station as a herring fishery; but now I claim to continue to charge during the herring season a toll for a boat coming in and out of the harbour, but I refuse to allow that boat that which I admit is an indispensable condition of its existence as a boat pursuing the herring fishery, namely, the accommodation of beaching itself upon the beach which belongs to me, and for which beaching I was authorised by Parliament to take a particular toll? My Lords, if that can be done, the whole Act can be overthrown. The same person may say—I will not allow any boat to come into the harbour; or he may say, I will allow boats of a particular tonnage or belonging to a particular nation to come in; I will pick and choose; I will take such toll out of these mentioned in the Act as is convenient to me, and I will refuse any other accommodation mentioned in the Act; and I will contend that, provided I do not exact any other toll, I have no obligation to allow any other service to be given. My Lords, I apprehend that that would be quite fatal to the principle of an Act of this kind, and that your Lordships will lay down and maintain this rule—that any person soliciting an Act giving these high powers of charging tolls, does it upon the faith of having represented to the Legislature that he will provide the accommodation mentioned in the Act, and that while he exacts the toll, or is in a position to exact the toll, he cannot refuse the accommodation which is pointed out by the Act.

My Lords, a question might arise, but does not arise in this case, as to how far the tolls might be charged if the works, or those of them which would cost money, had not been actually executed as contemplated in the Act. That does not apply to the present case. Your Lordships have here to deal with a case where no work requires to be executed—where nothing requires to be done but to hold out that amount of accommodation which the fishermen actually possessed at the time when the Act passed.

My Lords, I need hardly add, although it fixes perhaps more distinctly the state of things which was in the contemplation of every one when this Act passed, that Lord Aberdeen himself after the Act passed, and after he had received from Parliament that which he had not before—a right of exacting a particular due for a particular service—addressed himself to altering the mode of paying the rent of £1, 17s. 6d. which before that time had been paid by these fishermen as a gross sum. He divided it in this way—he assigned £1, 2s. 6d. of it as the rent of the cottage which the fishermen occupied, and he assigned the residue of it as the equivalent of the duty, as made up of the various items of duty which he was authorised by the Act to exact. My Lords, that only makes it more clear what Lord Aberdeen intended, and the opinion which he formed upon his rights and obligations under the Act.

He was of opinion that he was bound to supply the fishermen with the accommodation they had previously enjoyed for the purpose of beaching their boats, and that, on the other hand, he was armed by this Act of Parliament with the power of charging them the 5s. for the beaching, and that that 5s. was nothing more than what had previously been included in the gross sum which the fishermen had paid to him.

I therefore submit to your Lordships that the interlocutor of the Court of Session is entirely right. It fixes the obligation on the owner of the *locus in quo* of allowing the fishermen to use this ground for beaching their boats as long as he provides no other convenient and safe place for that purpose. It does not prevent his using this land for any other purpose if he provides another place which will be equally safe and convenient for the fishermen. I therefore move your Lordships that the interlocutor appealed from be affirmed and the appeal dismissed with costs.

Lord Chelmsford—My Lords, it appears as a matter of fact that for many years before the Act of 1845 the fishermen of Boddam had been used to beach their boats on the ground in question. It is immaterial that the number of boats was originally much smaller than at the present time; all the fishermen who required to use the ground for this purpose were permitted to do so.

In 1845 the Earl of Aberdeen obtained the Act of 8 and 9 Vict. c. 25, for making a harbour at Boddam. By the 7th section the privilege or right of the fishermen was recognised by giving the right to take a due of 5s. for all boats laid up at Boddam for the winter season. The appellant purchased the estate in 1865. He admits that he saw particulars and noticed this charge, for he says—"I saw the particulars of the purchase when I got the estate. I noticed that a charge of 5s. was made for beaching boats. I did not understand that that referred to the statutory charge. I do not think I saw the Act of Parliament for perhaps two years after I bought the estate." (The ignorance of the appellant of the Act of Parliament is immaterial, for he was bound to make himself acquainted with it). And he adds—"but I know that a charge was made for beaching boats from the time I became the proprietor." He admits that this charge of 5s. was made, and that he knew the terms of the receipts which were given down to the year 1870. These receipts were for beaching boats.

In 1871 the appellant first thought of resisting the right of the fishermen to beach their boats on the ground, and proposed to charge 7s. 6d., as he says, to take it out of the category of the 5s. charged as harbour dues. He contends that the schedule refers to boats laid up in the harbour, but he admits that he is aware that boats cannot be laid up with safety at the present moment. He says—"I am aware that boats could not with safety be laid up in the harbour, but had the works been carried out which are contemplated by the Act it would have been safe; at present the boats could only be beached where they are now beached, or on other ground belonging to myself or other people, of which there is plenty." Therefore, if the use of the ground is permissive only, and the permission is withdrawn, there is no place where the fishermen can beach their boats.

Now, the 5s. has been received for many years by the appellant as a due for beaching boats on the ground in question. The notice appended to the receipts may be taken against the appellant's contention that the statutory dues referred to boats laid up in the harbour, for they speak of the beaching by the words "laid up on the lands of Boddam." I think therefore that, at least until the harbour is made fit for beaching boats with safety, the fishermen must be protected in the use of the beaching ground they have so long enjoyed without interruption, and I agree with my noble and learned friend that the interlocutor ought to be affirmed.

Lord Hatherley—My Lords, I entirely concur in this decision, for very much the same reasons as have been stated by my noble and learned friend on the Woolsack, and I do not think it necessary to add anything to what has been alreay said.

Lord O'Hagan—My Lords, notwithstanding two arguments, as able I think as any I have heard in your Lordships' House, I am of opinion that the attempt by the appellant to deprive the respondents of the privilege they have so long enjoyed cannot be permitted to succeed. That privilege is essential to the prosecution of the industry of the Boddam fishermen. It has been enjoyed for a multitude of years. It is recognised by an Act of Parliament which was procured by a private person, and from its nature must be taken to imply a contract, made effective by the sanction of the Legislature, between the nobleman who obtained it, on his own representation and presumably for his own advantage, and the persons whom it directly affects.

It is established that the fishing at Boddam could not be carried on without fit conveniences for beaching in the winter season, and the appellant's own evidence shows that there is no other ground suitable for that purpose to which the respondents have access, although he says that there is "plenty of other ground belonging to himself or others which might be so employed." The schedule of the Act contemplates the "laying up" of all boats at Boddam during the winter, on condition of the payment of 5s. Between "laying up" and "beaching" there is no distinction, although in the Court below an attempt was made to deny their identity. This is manifest from the receipts given from 1865 until 1873, and from the cross-examination of Mr Aiton himself. The Act having in specific words, as it seems to me, recognised and regulated the antecedent user, the conduct of the parties afterwards was governed by it, and demonstrated, if such demonstration were necessary, that the construction of the schedule by the proprietor and the fishermen was precisely that on which the respondents now rely. Until 1865 the beaching went annually on as before, although the proprietor did not for some time exact the payment of the 5s. per annum; but when the appellant came into possession, and ever since, that payment has been regularly received by him, and he has given annual receipts for dues which are indifferently described in them as "beaching dues" "dues for beaching" "season's beaching" or "beach dues."

Having regard to the undisputed facts, the claim of the appellant is in my judgment neither reasonable nor just. He admits that he was a purchaser with noticed of the rights of the fishermen. "I saw," he says, "the particulars of the purchase when I got the estate. I noticed that a charge of 5s. was made for beaching boats." And having had such notice, and having for many years recognised the privilege by receiving the payments and admitting his full knowledge that the withdrawal of it will be disastrous to the humble men who cannot pursue their calling unless their boats be preserved as they have been for generations from the winter storms, I am clearly of opinion that he should not be permitted to set up a claim which is equally discredited by lengthened usage, consensual legislation, and his own deliberate conduct for so many years.

I therefore entirely concur in the judgment proposed by my noble and learned friend on the Woolsack.

Appeal dismissed and judgment affirmed.

Counsel for Appellant — Southgate, Q.C. — Murphy, Q.C. Agents—Graham & Wardlaw, Westminster—Auld & M'Donald, W.S.

Counsel for Respondents — Cotton, Q.C. — Pearson, Q.C.—W. A. Brown. Agents—Holmes & Co.—Alexander Morison, S.S.C.

Monday, February 28.

MUIR *v.* THOMPSON AND OTHERS.

(Aute, vol. ix. p. 132.)

Mandate—Adjourned Meeting—Writ—Erasure.

Held (aff. judgment) that mandates bearing to be used at a meeting of the Parochial Board of a parish, to be held on 2d August or any subsequent day to which the said meeting might be adjourned, were validly used at a meeting held on a later day for the same purpose, although there had been no meeting on 2d August, and consequently no adjournment. *Held*, also, that an alteration by the printer of the date originally appointed in the mandate did not invalidate such mandate.

This was a case of disputed election to the inspectorship of the poor for the parish of Inveresk. The grounds of objection will be found in the report of the case in the Court below.

The defenders appealed against the judgment of the Second Division of the Court of Session.

The only objections discussed were those as to the invalidity of the mandates given for the election, on the ground (1) that no meeting for election had been held on the day specified in the mandates for such meeting, and that consequently the meeting at which the election was made could not be said to be an adjournment of such meeting, and that the mandates therefore, as they bore to be granted for a meeting to be held on the 2d August 1870, or any subsequent date to which such meeting may be adjourned, did not apply to the meeting at which the election took place; (2) that the date in certain mandates had been erased, and that they were therefore void.

Counsel for the respondents were not called on.

At delivering judgment—

LORD CHANCELLOR—My Lords, there was an election to the office of inspector of poor in the parish of Inveresk, and the question arose in consequence of that election, whether the respondent (Thompson) had been properly elected, his election being challenged by the appellant. Various objections were made to the validity of it, and two have now fallen to be reviewed by your Lordships. Those two objections concern, one of them 12 mandates and proxies, and the other 33 mandates, given by certain persons qualified to vote at that election.

My Lords, the objection to the 12 mandates was this. They were granted in point of form authorising the mandatory to attend, vote, and act for the person giving the mandate, "at a meeting of the Parochial Board of the parish of Inveresk, to be held on the 2d of August 1870, or any subsequent date to which the said meeting may be adjourned, for the election of an inspector of poor and collector of poor-rates in room of the late Mr Andrew Symons, with the same powers as belonged to the person signing the mandate." My Lords, the persons holding 12 of these mandates attended a meeting for the election of an inspector of poor and collector of poor-rates in the room of Symons, in 1870; they attended the only meeting held for that purpose in that or any other year, and they voted at that meeting. But the meeting was not held, and was not intended to be held, upon the 2d of August 1870, and therefore it could not be adjourned from the 2d August to any subsequent day. It was held upon a subsequent day in August. It was adjourned to a day in September, and the business was concluded in September. The objection is that the mention of the date of the 2d August 1870 being an error, made it impossible for the mandatory to to exercise his powers on the right day in August on which the meeting was held.

My Lords, I have no doubt that when any case comes before your Lordships or any court in Scotland in which any departure from a mandate, in anything which is essential or can alter the rights of the parties, is shown, it will be held that such a departure invalidates the use which has been made of the mandate. But the question here is, Is there any departure from the mandate in anything which can be essential? Your Lordships invited the learned counsel at the bar to point out any matter in respect of which this error of date could have led to any evil consequence—to any consequence not expected by the person who gave the mandate. But no suggestion of that kind could be made; nothing could be suggested in which there could have been any possible evil resulting from the error. In point of fact, my Lords, I submit to your Lordships that this is an instance of what is term in law *falsa demonstratio*. There is an error in the date which is corrected by the other parts of the mandate—the mandate pointing out in a way which could not be mistaken what the meeting was to be held for, and what the business was which the meeting was to transact. The object of the meeting was such that only one meeting could be held for the purpose. There could therefore