he intended to give effect. Those materials your Lordships have here; and the note appended to these findings is, in my opinion, conclusive upon this point, that the arbiter rejected the evidence not because he was unwilling to hear proof from the parties upon a relevant question of fact, but because, upon the construction of the contract which seemed to him to be the right one, he was of opinion that the facts proposed to be made the subject of inquiry were not relevant. I cannot otherwise construe two sentences in that note. I take the last of these sentences first. He says—"In the absence of an allegation of fraudulent dealing, I think the principle must be followed of estimating the price according to the amount received from the various products during each year." That is a plain affirmance of the correctness of the accountant's report, who had taken from the books of the respondents the amounts received for the various products during each year, and had made these the materials from which he had extracted the average price which under certain deductions was payable to the appellants. Now, if that was the correct principle, to inquire into the amount of hard scale and the amount of soft scale which went to make the particular item of scale in the accountant's report would have been a very idle proceeding, for it would simply have led to this, to extracting and making a second item containing all the materials of the first, and neither the summation nor the average arrived at would have been effective to any extent whatever.

My Lords, the first part of the note, which in logical sequence ought to be the last, is this—"The admissibility of taking into consideration the different qualities of scale was decided by me in the negative in a previous stage of the reference between the parties." It is said that these words do not indicate that the learned arbiter meant to proceed upon any construction of the contract, or to determine that proof upon the subject was inadmissible. I am quite unable to take that view of the language of the arbiter. When it is read in connection with the passage to which I have already referred, its meaning becomes perfectly clear. But even if it were taken by itself the language seems to me to be altogether free from ambiguity. If it were inadmissible, as the arbiter in plain terms says it was, to take into consideration the different qualities of scale, of what relevancy could a proof directed to the different qualities of scale have been? The learned arbiter seems to have thought that he had decided it before. With the ground upon which he came to that conclusion we have no concern. He may have been in error; he may have been mistaken in supposing that his judgment on the former occasion constituted a proceeding directly bearing upon the point which he was deciding. That appears to me not to be of the smallest consequence. His conduct is not said in any way to have been corrupt or to have been in any other way a violation of the Regulations of 1695.

Therefore it seems to me that this portion of the award being entirely within the competency of the arbiter, unless it is successfully assailed upon the ground which I have indicated, the case of the appellants must necessarily fail.

LORD HERSCHELL—My Lords, I entirely agree with what has been said by my noble and learned friends who have preceded me. The view which I take of this case, and the reasons which have led me to the conclusion that it is impossible in any way to interfere with this decree-arbitral, are to my mind completely and satisfactorily set forth in the judgment of Lord Rutherfurd Clark in the Court below.

LORD MORRIS concurred.

Their Lordships dismissed the appeal with costs.

Counsel for the Appellants—Finlay, Q.C. —Dundas. Agents—Loch & Goodhart, for Waddell & M'Intosh, W.S.

Counsel for the Respondents — D.-F. Balfour, Q.C.—Ure. Agents—Wm. Robertson & Company, for Cairns, M'Intosh, & Morton, W.S.

Monday, July 27.

(Before the Earl of Selborne, and Lords Watson, Bramwell, and Morris.)

M'COWAN *v.* BAINE & JOHNSTON.

(*Ante*, vol. xxvii. p. 782, and 17 R. 1016.)

Insurance — Maritime Policy — Construction—Vessel under Tow—Collision with Tug.

A ship was insured "from the Clyde (in tow) to Cardiff" upon a policy which bore that "if the ship hereby insured shall come into collision with any other ship or vessel, and the insured shall in consequence thereof become liable to pay, and shall pay, to the persons interested in such other ship or vessel . . . any sum of money, . . . we (the underwriters) will pay the assured three-fourths of the sum so paid." A tug while towing said ship collided with another vessel and sank it. Both the tug and the tow were by the Admiralty Court in England found liable in damages to the owners of the vessel sunk.

Held (*aff.* the decision of the Second Division—*diss.* Lord Bramwell) that the owners of the tow were entitled to recover under the policy of insurance, although the tow had not itself been directly in collision.

This case is reported *ante*, vol. xxvii. p. 782, and 17 R. 1016.

M'Cowan appealed.

At delivering judgment—

LORD WATSON—In a suit before the Admiralty Court of England it was de-

cided by Lord Hannen that the collision was due to the fault of the tug in not porting his helm in terms of the regulations, and that the "Niobe" was likewise to blame in respect of her failure to keep a look-out and to control the steerage of her tug. The respondents have in consequence paid £12,909 to the owners of the "Valetta," and they now sue one of the underwriters of the policy for his proportion of the sum which they claim by way of indemnity.

The condition which must be fulfilled before any obligation can attach to the underwriters is "that the ship hereby insured shall come into collision with another ship or vessel." These words in their literal sense import that there must be contact between the "Niobe" and such other ship or vessel, causing damage to the latter. There are many ways in which a ship under sail may, without being herself in collison, become liable to bear the whole damages resulting from a collision. Her unjustifiable manœuvres may occasion the colliding of two or more vessels other than herself without any blame on their part, and in that case the offending ship, and she alone, is responsible for the consequences of her fault. In such a case I should not be prepared to hold that the "Niobe" had in the sense of the policy "come into collision with" the vessels whom she caused to collide, because there would be no ground in fact or law for the suggestion that the "Niobe" ought to be identified with any one of them.

So far as I can discover, none of the learned Judges of the Court of Session indicated an opinion that the clause was so expressed as to cover every kind of liability for collision. They based their decision upon a special rule of law, which has admittedly no application except as between a ship and her tug. They held that the identity which that rule established between tow and tug is so complete that the "Niobe" herself must be considered to have come into collision with the "Valetta" within the meaning of the policy. A sailing-vessel and the steam-tug which has her in tow have frequently been described by eminent Judges as for certain purposes constituting "one ship"—an expression which has been borrowed by text writers, and is familiar to persons conversant with maritime law. The expression is figurative, and must not be strained beyond the meaning which the learned Judges who have employed it intended it should bear. As I understand their use of the expression, it signifies that the ship and her tug must be regarded as identical in so far as the two vessels, with their connecting tackle, must be navigated as if they were one ship, and the motive power being with the tug, must, in order to comply with the regulations for preventing collision at sea, be steered and manœuvred as if they formed a single steamship; and also, in so far as the ship towed, when she has, as in this case, the control of the tug and the duty of directing the course of the tug in accordance with these regulations, is responsible for the natural consequences of the tug being wrongly steered, through the neglect of her officers or crew to perform that duty. There was therefore a legal connection betwixt the "Niobe" and the "Flying Serpent" which could not subsist between her and any other vessel which her fault might drive into collision with another ship. The "Niobe" was, in the contemplation of the law, one and the same ship with the "Flying Serpent" for all purposes of their joint navigation with a view to avoid the risk of collision, and the fault which led to a collision between that legal composite and the "Valetta" was admittedly the fault not only of the "Flying Serpent" but of the "Niobe."

I admit the force of the appellant's argument that contracts ought to be construed according to the primary and natural meaning of the language in which the contracting parties have chosen to express the terms of their mutual agreement. But there are exceptions to the rule. One of these is to be found in the case where the context affords an interpretation different from the ordinary meaning of the words, and another in the case where their conventional meaning is not the same with their legal sense. In the latter case the meaning to be attributed to the words of the contract must depend upon the consideration whether in making it the parties had or had not the law in their contemplation. The point thus raised appears to me to be a very narrow one, but in this case the contracting parties are shipowners and underwriters, and the clause in question relates to possible legal liabilities of the ship insured which are entirely dependent upon the rules of maritime law. In these circumstances I have, not without some hesitation, come to the conclusion that they must be presumed to have known the law, and to have contracted on the faith of it.

LORD SELBORNE and LORD MORRIS concurred.

LORD BRAMWELL—It is said that to hold as I do is a narrow construction. I respectfully deny it. I do not construe the words; I simply read them as I should "twice two are four." The Lord Justice-Clerk came to the conclusion in favour of the pursuer not without hesitation. Lord Young says the collision was just the sort of collision the possibility of which was contemplated by both sides. I suppose, then, he does not agree with the Lord Justice-Clerk, that it would have been far better if more clearly expressed. Lord Rutherfurd Clark doubts if the pursuer is right. Lord Lee agrees with the Lord Ordinary.

It is said that the "Niobe" was, in the contemplation of the law, one and the same ship with the "Flying Serpent" for all purposes of their commercial navigation with a view to avoid the risk of collision. I respectfully deny it. The law does not contemplate anything like it. A most distinguished lawyer, Lord Kingsdown, did

once use the unfortunate metaphor that the tug may for many purposes be considered as part of the ship to which she is attached. He says "for many purposes" —not all. He does not say that it is to be considered that the plain words of a contract are to be misinterpreted. Had he foreseen what use would be made of his words, he would not have used them.

It is said the parties to this suit knew all about this, and contracted on the footing of it. Now, this seems to me to be a case too common, in which there is a tendency to depart from the natural primary meaning of the words and to add to or take from them —that, constructively, words mean something different from what they say. It introduces uncertainty. No case is desperate when plain words may be disregarded. I deprecate this in all cases. In this particular one I believe it will be attended with at least this injustice, that the parties did not contemplate the case that has occurred, and perhaps would have raised the premium if they had. That they did not contemplate it I infer from the words that they used. Ingenious cases were put forward in which there might be damage with the "Niobe" without her touching the vessel damaged, as where she pushed an intermediate vessel against that damaged. I have no doubt that ingenuity will suggest many difficult cases. I content myself with dealing with the present, where the ship did not in any sense come into collision with any other ship and cause damage. I think the judgments should be reversed.

Their Lordships dismissed the appeal with costs.

Counsel for the Appellant—Finlay, Q.C. —Walton. Agents—Waltons, Johnson, & Bubb, for J. & J. Ross, W.S.

Counsel for the Respondent — Sir R. Webster, Att.-Gen. — Gorell — Barnes — Leck. Agents—Lowless & Company, for Webster, Will, & Ritchie, S.S.C.

Thursday, March 19.

(Before Lords Herschell, Watson, Macnaghten, Bramwell, Morris, and Hannen.)

RITCHIE & COMPANY *v.* SEXTON.

(*Ante*, March 18, 1890, 27 S.L.R. p. 536, and 17 R. 680.)

Reparation — Slander—Innuendo—Issue—Question of Construction Left to Jury.

A person who objected to certain questions put in the House of Commons by a member of Parliament, wrote remonstrating with him for traducing him by false charges which the questions implied to be true. The writer illustrated his case by supposing that he should induce an opponent of his correspondent to put questions in the House of Commons implying that his correspondent had had *delirium tremens* and had been intoxicated in public, and declared that such a course would be as much justified as that to which the writer objected. He disclaimed all intention of giving pain "by the recital of these imaginary stories."

The letter was published in a newspaper, and the member of Parliament sued the proprietor of the newspaper for damages, on the ground that the letter represented him to be a drunkard.

The defender objected to an issue being allowed and put to a jury, on the ground that the true and obvious meaning of the letter was not to impute anything to the pursuer, but only to put a suppositious case.

Held (*aff.* the decision of the First Division) that the pursuer was entitled to an issue, as the letter was capable of being understood in a libellous sense, and that it was for the jury to determine whether there was libel or not.

This case is reported *ante*, March 18, 1890, 27 S.L.R. p. 536, and 17 R. 680.

The defenders Ritchie & Company appealed.

At delivering judgment—

LORD HERSCHELL—This is an appeal from an interlocutor in which it was held that in an action for libel brought by the respondent against the appellants there was an issue fit and proper to be submitted to a jury. The only question which your Lordships have to consider is, whether that determination of the Court of Session was correct? All that has been decided is that there is such an issue which the jury will have to consider and determine, and there is no controversy about the law which governs a case of this description. If the statements or letter which is charged to be libellous be of such a nature that it is capable of a construction which would be libellous in point of law — if it contains matter which is capable of such a construction that it might be read by reasonable men as libellous in point of law—then it is for the jury to determine whether a case has been made out, and the Court cannot stop the case at its inception and prevent a verdict of a jury. The question therefore resolves itself into one of simple construction, what interpretation might reasonably be put upon the document in question. I believe all your Lordships are agreed that the Court below was right in coming to the conclusion that the case could not be withdrawn from the jury, and that it was right to direct an issue. That being so, it would be obvious that there are reasons for not giving a detailed statement of the views which have led your Lordships to that conclusion, inasmuch as if the case is to be tried before a jury the reasons which would be given by your Lordships would be arguments which might be regarded in the light of prejudging the very question which would have to be determined by a jury. Therefore I do not propose to give any reasons for the conclusion at which I