represented that great inequalities had been allowed to creep in regarding the values at which such subjects were entered in the valuation roll. It was further resolved not to endeavour to deal with the whole county in one year, but to take it by instalments, leaving it with the Assessor to deal with such districts as he considered best in any particular year. This valuation was practically completed this season, there being only a few outlying subjects undealt with. As the work proceeded, lets and more latterly leases between fathers and sons, mothers and sons, and between brothers and other near relations, came to be frequently pled as a bar to dealing with such subjects. In consequence all subjects let or leased between near relatives were looked into and the subjects valued, each individual case being dealt with on its own merits. In regard to the present case, the Assessor, while admitting the existence of the lease, cannot accept it as conclusive as regards the actual relations of the proprietor and tenant and of a *bona fide* rent. The only evidence adduced was the lease dated in 1897, many years after the commencement of the occupation by the son as tenant. There were no witnesses. No receipts were produced to show that the rent in the lease, or any rent, was actually paid, or that a *bona fide* relation of landlord to tenant subsisted between the parties. That being so, and it being proved by competent valuators that the rent conditioned in the lease was an inadequate one, and not the rent at which the farm might reasonably be expected to let one year with another, the Assessor considered he was justified in disregarding the lease in so far as rent was concerned, and entering the farm in the valuation roll at the rent at which it might reasonably be expected to let. . . . A most material consideration is the fact that the Bu' of Braebuster has been very much enhanced in value since it came into the occupation of the proprietor's son. When let to the former tenant at £150 the whole buildings were in a most dilapidated if not ruinous condition. Since then a most complete and commodious steading, one of the best in the county, has been built. There has also been erected a dwelling-house very much larger and very much more convenient and ornamental in character than the ordinary farmhouse. These buildings represent a capital outlay of several thousand pounds, 4 per cent. on which would exhaust the whole rent in the lease, and leave nothing for the rent of the land. In addition, a large amount of draining and other improvements have been executed. Altogether this farm is a very different subject now from what it was when in the occupation of the former tenant, and is very much enhanced in value as a lettable subject." . . .

The Judges were of opinion that the determination of the Valuation Committee was wrong.

Counsel for the Appellant—Crole. Agent—William B. Rainnie, S.S.C.

Counsel for the Assessor—Chree. Agent—P. H. Cosens, W.S.

HOUSE OF LORDS.

Monday, July 28.

(Before the Lord Chancellor (Halsbury) and Lords Macnaghten, Brampton, Robertson, and Lindley.)

CASTANEDA *v.* CLYDEBANK ENGINEERING AND SHIPBUILDING COMPANY, LIMITED.

(*Ante*, December 10, 1901, 39 S.L.R. 231, and 4 F. 319.)

Title to Sue—Action by Minister of Marine of Foreign Monarchical State—Breach of Contract to Build War Vessels—Foreign Monarchical State—Foreign.

In 1896 a contract to build four torpedo boat destroyers for the Spanish navy was entered into between A, Chief, and B, Commissary of the Spanish Royal Naval Commission, London, "both in the name and representation of his Excellency the Spanish Minister of Marine in Madrid, hereinafter called the Spanish Government," and a Scottish shipbuilding company. The contract provided that it was to have no legal power until ratified by the Spanish Government. The contract was duly ratified by the Spanish Government. In 1900, D, then Spanish Minister of Marine at Madrid, but who was not Minister of Marine at the date of the contract; E, then chief of the said Spanish Royal Naval Commission, London; F, the Commissary of the same; and the said Spanish Royal Naval Commission, raised an action against the shipbuilding company for breach of the contract of 1896, upon the ground that the torpedo boat destroyers had not been delivered within the time specified in the contract, and that loss and damage had been sustained by the Spanish Government owing to the delay. The pursuers averred that both in making and enforcing contracts relating to war vessels the Government of Spain was by the law of Spain represented by the Minister of Marine.

Held (*rev.* judgment of the Second Division, and *restoring* judgment of Lord Low, Ordinary) that the Minister of Marine for the time being had a good title to sue the action.

This case is reported *ante ut supra.*

The pursuers, his Excellency Rear-Admiral Don Jose Ramos Yzquierdo y Castaneda, the Spanish Minister of Marine in Madrid, and others, appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—With the greatest respect for the learned Judges of the Second Division, I am not able to entertain the least doubt that the decision of the Lord Ordinary was right. This is no question, and it has been frankly admitted by the learned counsel on the part of the respon-

dents that it is no question, of any peculiarity of the law of Scotland; the question here is, whether or not the right parties are suing, and it appears to me to be perfectly immaterial to consider for this purpose whether or not the ultimate interest may be in the King of Spain or in whom it may be. The shipbuilders here have entered into an express contract with a person who is called in the contract the Minister of Marine of Spain to build certain ships, and what is incident to that contract, the right to enforce that contract and to enforce the penalties under that contract, is in the contracting party. That contracting party has brought the action, and it appears to me that it is impossible to say that there is no right in him to sue.

The contract itself, which seems to me to remove all difficulty in the matter, is this, "contract entered into" "between the Chief of the Spanish Royal Naval Commission," and "the Commissary of the Commission," mentioning their names, "both in the name and representation of his Excellency the Spanish Minister of Marine in Madrid, hereinafter called the Spanish Government, on the one part, and James and George Thomson, Limited, engineers and shipbuilders, Clydebank, Scotland, in their own name and representation, on the other part." Those are the two contracting parties. Now, subject to the one point whether the words "Spanish Minister of Marine" meant the Spanish Minister of Marine at the time that this contract was entered into, or meant the Spanish Minister of Marine for the time being whenever it became necessary to enforce the contract or to sue for penalties—subject to that one question, it appears to me to be exceedingly plain that one of the contracting parties is the Spanish Minister of Marine, and if the Spanish Minister of Marine brings this action, I can conceive no principle why the action should not lie, and why he has not a right to bring the action.

Upon the question whether it means the Spanish Minister of Marine at whatever time the question should arise, or the Minister who held office at the time the contract was made, it seems to me to be simply a question of construction. That question of construction comes to this—Here is a contract entered into between the shipbuilders and the department which deals with the Spanish navy, and I suppose both parties—the parties who agreed to build and the parties who agreed to pay—would reasonably have had in their contemplation the possibility that the Government might change, and that the individual Minister might be altered from time to time, and that if the contract was to be available to either of the parties, either as plaintiff or as defendant, it must be with a continuity in that contractual relation which would enable the rights of the parties to be determined. Therefore what would be the reasonable inference to be drawn from the use of such a phrase as "the Spanish Minister of Marine?" If the parties intended to confine the contractual obligation to the Minister who at the time the contract was entered into occupied that position, it would have been easy to mention his name, but it appears to me that with the object of ensuring continuity of contractual obligation the parties say in terms, this contract is with the "Spanish Minister of Marine," and though the words "or his successors" are not used, it appears to me that that is what the contracting parties meant. That is a mere question of the construction of the contract itself, and applying one's mind to the words of the contract itself it appears to me to be beyond doubt that what the parties did contemplate was what I have described as the continuity of the contractual obligation. If that is so, here we have the shipbuilders on the one hand and the Spanish Minister of Marine on the other in the proper *forum* in which to determine the question.

We have had a great deal of learning on the subject of international law brought before us. Certainly some parts of it were extremely novel to me as regards the principles I have heard insisted on. I am not aware of any such principles as have been described, but however that may be, it appears to me that the decision of this case is quite independent of such considerations. Here is a lawful contract entered into between parties ascertained, and the simple question is whether that is a contract which can be enforced in this country by the present appellants. Time presses me, and therefore I am unable to say more—indeed had it been otherwise I should only have said more out of respect to the learned Judges from whom I am differing, because the proposition itself seems to me exceedingly plain, and I do not know that it needs further exposition. Therefore I move your Lordships that the interlocutor against which the appeal is brought be reversed, and that the judgment of the Lord Ordinary be restored.

LORD MACNAGHTEN—I am of the same opinion.

LORD BRAMPTON—I concur.

LORD ROBERTSON—It is satisfactory in the interest of Scotch commerce to know that the judgment is not supported upon any ground peculiar to Scotch jurisprudence. There is nothing in the municipal law of Scotland which places any obstacle which is unknown in England in the way of the enforcement of contracts, and therefore in the way of the making of contracts with foreign Governments. The judgment is rested, and rested solely, on grounds common to both England and Scotland.

Now, this contract on the face of it is a Government contract. The disclosed principal with whom the respondents contracted and by whom in the sequel they were paid, is the Spanish Minister of Marine in Madrid, "hereinafter called the Spanish Government." I pause to observe that in this country it is well settled that the individual officer who so contracts is not personally liable, but the liability is on the department which he represents. Therefore it seems

to me that the mere change of officer is *prima facie* no objection to the title of the new minister.

The question then is, who is entitled to enforce this contract if article 11 of the pursuer's condescendence be true. The substance of that article is, that according to the constitution of Spain the proper officer to make such contracts, to enforce them, and to recover damages for their breach, is the holder of this office. Now, it seems to me that the true question is this—if the appellants' averment be true will the suit of this minister keep these respondents safe against a subsequent demand by the King? Beyond this, on principle and on authority, they have no interest to criticise the manner in which the foreign Government sues. Well, the averment of the appellants is quite explicit on this point. When the appellants say that by the constitution of Spain this minister has right to recover this money, they say in so many words that the King is bound by this minister's acts done in his region and province.

Now, the theory of the Second Division is, that even if this be the constitution of Spain, the King alone can sue in our Courts. This seems to me not only unsupported by international law but contrary to principle. While apart from more particular information about the country in question our Courts will assume that where there is a monarch public property is vested in him, this does not touch the present case. In the first place, it proves no more than that the King may sue, not that he must sue. The present is not a question as to the person in whom the property is, but in whom is the legal right to administer this property, and the 11th article of the condescendence says that the right to deal with this particular property is, by Spanish law, where the contract would lead one to expect it to be, and that is in the minister for whom the contract was made.

I may add that in applying to the present question the general law of agency it is illegitimate to assume that the agent has merely the ordinary powers. The gist of the 11th article of the condescendence is that the agent (if you choose so to call the minister) has by law the execution of powers which are indeed in theory vested in the sovereign, but not to any effect which touches the interests of the other party to the contract.

LORD LINDLEY—I am of the same opinion.

Interlocutor appealed from reversed, and the respondents (the defenders) ordered to pay to the appellants (the pursuers) the costs both in the House of Lords and Court of Session.

Counsel for the Pursuers, Respondents, and Appellants—Solicitor-General for Scotland (Dickson, K.C.)—Bankes, K.C.—Blackburn. Agents—Macandrew, Wright, & Murray, W.S., Edinburgh; J. G. Davies, London.

Counsel for the Defenders, Reclaimers, and Respondents—Lawson Walton, K.C.—Ure, K.C. — Tait — Flassel. Agents—M'Grigor, Donald, & Company, Glasgow; Forrester & Davidson, W.S., Edinburgh; Ashurst, Morris, Crisp, & Company, London.

Tuesday, August 5.

(Before Lord Davey in the chair, Lord Robertson, and Lord Lindley, the concurrence of the Lord Chancellor (Halsbury) and Lords Macnaghten and Brampton being intimated.)

DISTRICT COMMITTEE OF LOWER WARD OF LANARKSHIRE *v.* MAGISTRATES OF RUTHERGLEN.

(*Ante*, March 19, 1901, 38 S.L.R. 457, and 3 F. 742.)

Local Government—Burgh—County—Royal Burgh—Public Health—Local Authority — District Committee — Area within Ancient Royalty but Outside Boundaries for Police Purposes—Limits of Burgh and County — Statute — Construction — Public Health (Scotland) Act 1897 (60 *and* 61 *Vict. c.* 38), *secs.* 3 *and* 12—*Local Government (Scotland) Act* 1889 (52 *and* 53 *Vict. c.* 50), *sec.* 44.

Held (*rev.* judgment of the First Division and *restoring* judgment of Lord Kyllachy, Ordinary) that the local authority, for the purposes of the Public Health Act 1897, within an area comprised within the ancient royalty of a royal burgh, but outside the area of the burgh for police purposes, was the district committee of the county council and not the council of the royal burgh.

This case is reported *ante ut supra.*

The pursuers the District Committee of the Lower Ward of Lanarkshire appealed to the House of Lords.

At delivering judgment—

LORD DAVEY—Rutherglen is a royal burgh and contributes to send a member to Parliament. The parliamentary boundaries of the burgh include a large portion of the ancient royal burgh and some territory not within the royalty, and exclude a large territory forming part of the royalty. By the Municipal Reform Act 1833 (3 and 4 Will. IV. c. 76) the right of electing the town councils in all royal burghs (with an immaterial exception) was given to all such persons, and such only as were or should be qualified as owners or occupants of premises within the royalty to vote in the election of a member of Parliament for such burgh. On the 10th March 1863 the Magistrates and Council of the royal burgh of Rutherglen adopted the Police Act 1862. I shall for the moment assume that such adoption related only to such part of the burgh as was included within the parliamentary boundaries. By the Burgh Police Act 1892 that Act was made applicable to every existing burgh with the exception of five large burghs named in