

contradict the charter-party; on the contrary, it explains it. The import of the parole proof is clearly shown by the Sheriff-Substitute, and I think that his judgment is right. I therefore concur with your Lordship.

LORDS BENHOLME and NEAVES concurred.

The Court pronounced the following interlocutor:—

“Find that the pursuers entered into the charter-party No. 10/1 of process: Find that the vessel was navigated on the voyage by the master and crew as the defenders’ servants: Find that the pursuers, as charterers of the ship, agreed with Messrs Couper, Blackwood, & Co. of Glasgow to carry therein on the said voyage 563 boards and 85 deals respectively of red pine, being then ‘in good order and well conditioned,’ and to deliver them in like good order at Natal, the usual risks of the sea, the act of God, and the Queen’s enemies, excepted: Find that the said wood, having been taken on board by the master and others as the defenders’ servants, was conveyed to Natal, but that on delivery there a large proportion of it was found to be much damaged, in consequence of having been carried on deck throughout the voyage, and been thereby injured by the weather and heat: Find that the wood in question was so carried on deck with the pursuers’ knowledge and consent, and under an agreement between the parties, by which the pursuers undertook the risk of its being so carried: Therefore recall the judgment appealed from: Sustain the defences; assolvie the defenders from the conclusions of the summons, and find the defenders entitled to expenses both in this and Sheriff-court; remit to the Auditor to tax the same and to report, and decern.”

Counsel for Defenders (Appellants)—Watson and Keir. Agents—Webster & Will, S.S.C.

Counsel for Respondents (Pursuers)—Solicitor-General (Clark) and Balfour. Agents—J. & R. D. Ross, W.S.

Friday, March 14.

FIRST DIVISION.

MURE v. MURE.

Divorce—Evidence—Question inferring Criminality—Right of Witness to decline to answer.

In an action of divorce the pursuer obtained a commission to examine a party resident abroad, with whom the defender was alleged to have committed adultery. The allegation of adultery was founded upon an action of affiliation raised at the instance of the witness proposed to be examined against the present defender some time previous. The defender moved the Court to instruct the commissioner to warn proposed witness that she was not bound to answer the question as to having had sexual intercourse with defender, adultery being a crime in law. The pursuer resisted the motion, on the ground

that the witness, having by her own act made public the fact of her intercourse with the defender, was not entitled to the protection of the Court. *Held* that the Judge Ordinary must attend to his commission the instruction craved by the defender; and further, if witness elected to answer, and did so in the negative, then questions might be put founded on her deposition in the affiliation case, with a view to testing her credibility.

Friday, March 14.

FIRST DIVISION.

[Lord Jerviswoode, Ordinary.]

MATHER v. MACBRAIRE AND BERWICK SHIPPING CO.

Salmon-fishing—Medium flum—Alevus—Public River—Damage by Floods.

In a case where two parties were owners of salmon fishings on opposite sides of a public tidal river, the boundary being the *medium flum* of the stream, and where an alteration in the bed of the river had been caused by unusually heavy floods,—*held* that the one proprietor whose fishery was injured by the alteration was entitled to interfere with the *solum* of the river to the effect of restoring it to its normal condition.

This was an action regarding salmon-fishings in the Tweed. The pursuer, Mr Mather, was owner of the fishings on the English side, Mr Macbraire of those on the Scotch, both of them being within the tidal or public portion of the river, and the *medium flum* being the common boundary. The Berwick Shipping Co. were Mr Macbraire’s tenants. Across the *medium flum*, and *ex adverso* of the parties’ lands, stretched a gravel bank, forming species of dam across the river, and left partially dry at low tide. This bank, which was about 125 yards long, began close to the English side, and stretched across the river to within about 20 yards of the Scotch side, and it was in the channel between the end of this bank and the Scotch shore that the great volume of water flowed, and consequently up this channel that most of the salmon passed. The method of fishing in use here was by watching, or as it is called “fording” the fish; that is, to say when a fish is seen to ascend the channel the net is cast in the still water above, and the fish landed.

The *medium flum* being the boundary of the two fisheries, the proprietor on the Scotch side had obviously a great advantage in having the main channel on his side, and the strongest reason for keeping it there. In 1867, and again in 1871, violent floods occurred, which cut a gap in the gravel bank and so brought the main channel close up to the *medium flum*, thereby greatly increasing Mr Mather’s facilities for fording the fish. This gap was on each occasion filled up by the defender, and the course of the river restored to its normal condition; and it was to restrain these operations that the present action was raised.