Tuesday, February 26.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

GILMOUR *v.* PETERSON.

Fishings—White-Fishing—Foreland—Act 1705, *cap.* 2.

By the Statute of Queen Anne 1705, cap. 2, it is enacted that all the Queen's subjects shall have the free use of *inter alia*, all "forelands" for bringing in, pickling, drying, unloading, and loading herring and white fish.

Held that a "foreland" was a rocky promontory jutting out into the sea beyond the line of the shore, and that certain rocks above high-water mark, but swept by the sea in time of storms, which did not project beyond the line of the shore, were not "forelands" within the meaning of the Act.

Crofters Holdings Acts—Rights of Crofter—Purpose of Croft—Erection or Use of Building on Croft not for Agricultural or Pastoral Purposes but for Fish-curing—Crofters Holdings (Scotland) Act 1886 (49 *and* 50 *Vict. cap.* 29), *secs.* 1, 8, 32 *and* 34.

Held that a crofter whose holding adjoined the seashore was not entitled under the Crofters Holdings (Scotland) Act 1886, without the consent of his landlord, to erect buildings on his croft for the purpose of fish-curing, or which were not designed or intended for agricultural or pastoral purposes.

William Ewing Gilmour, proprietor of the island of Foula, presented a note of suspension and interdict against Peter Peterson, crofter, Ham, in said island.

The complainer prayed the Court "to interdict, prohibit, and discharge the said respondent from (*first*) entering on, or using for the purpose of salting, curing, or drying fish, or for any other purpose whatever, two artificial beaches situated on the north and east of the lands of Liorafield, in the said island of Foula, the one beach adjoining and immediately to the north of the harbour and landing on said lands of Liorafield, and bounded on the north by the lands and croft of Veidal, and the other immediately to the west of the northern portion of said beach, and also bounded on the north by the said lands of Veidal, and also from molesting or interfering with the complainer's manager and servants and fishermen in the occupation of said beaches, and of the curing-shed situated on the said lands of Liorafield; and from (*second*) erecting or adding to on said lands of Liorafield any shed, building, or other structure designed or intended to be used for any other purpose than for the agricultural or pastoral purposes of the croft occupied by him at Ham or Liorafield, and in particular any shed, building, or other structure designed or intended to be used for the purpose of curing or storing white fish, or as a shop, and to grant interim interdict; and further, to decern and ordain the respondent to take down and remove a curing-shed recently erected by him on said lands of Liorafield immediately to the east of the curing-shed thereon occupied by the complainer and lying between it and the beach first above described, and failing his doing so within such short time as your Lordships shall determine, to grant warrant to the complainer himself to remove said shed at the expense of the respondent."

The complainer averred—"(Stat. 2) For some years prior to the term of Martinmas 1898, the respondent, in addition to his said croft, was tenant of a store or shop, a shed used for curing and storing fish, and cellar, and of the two artificial beaches described in the prayer of the note. The beach first described was prepared for use as a fish-curing station by former proprietors of Foula at great expense, by levelling the natural surface of the rocks, cutting a trench and two vats therein for the purpose of holding and curing fish, cutting a path through the rocks from the landing-place, and cutting and hollowing the rocks to form a pier and quay. The other beach was also constructed by a former proprietor at considerable expense, by laying down stones on the grass and thus forming a stance for curing purposes. Said beaches are outside of and form no part of the respondent's croft. Said store, cellar, and artificial beaches, which are used for curing fish, were for many years let to Mr L. F. U. Garriock, fishcurer. In or about the year 1888 Mr Garriock ceased to be tenant of said subjects, and they were then let to the respondent as a separate subject from his croft. They were expressly reserved to the landlord by the Crofters Commissioners in their order, dated 6th November 1889, pronounced on an application by the respondent to have a fair rent fixed for his croft. For the said subjects, other than his croft, the respondent paid a rent of £5. (Stat. 3) The complainer, having resolved himself to carry on the industry of fish-curing at said artificial beaches on Liorafield, gave notice to the respondent terminating his tenancy of said shop, shed, cellar, and beaches. The respondent, however, refused to cede possession thereof, and the complainer accordingly raised an action of removing against him in the Sheriff Court of Orkney and Zetland at Lerwick. The complainer obtained decree in said action on 14th September 1898. An extract of said decree is produced herewith. (Stat. 4) In obedience to said decree of removing, the respondent ceded possession of said shop and shed occupied by him at Liorafield, and removed from the beaches. He has, however, recently erected another fish-curing shed on said lands of Liorafield, of which he is tenant, within 4 yards of the shed formerly occupied by him as tenant foresaid, and between said shed and said artificial beaches, free access to which is thereby obstructed. He has also brought a quantity of materials to the island with a view to enlarging said shed or building a shop or some such erection on the lands of

Liorafield as soon as the season permits. He has further intimated his intention of again taking possession of and using said beaches or part thereof when the curing season comes round. Said beaches are indispensably necessary for the proper conduct of the complainer's fish-curing business. In these circumstances the present application has been rendered necessary."

The complainer produced an extract decree of removal dated at Lerwick, 14th September 1898, in an action brought by the complainer against the respondent, in which the Sheriff in absence decerned the respondent to flit and remove "from the shop or store, shed, cellar, and beaches at Ham in the island of Foula, Zetland, and that at or against the term of Martinmas 1898."

The complainer pleaded—"(1) The operations complained of being illegal, and in prejudice of the complainer's rights as proprietor of Foula, he is entitled to interdict as craved. (2) The respondent having been duly removed from the beaches described in the prayer of the note, the complainer is entitled to interdict against his returning thereto. (3) The respondent not being entitled to erect buildings for use as a shop or for fish-curing purposes on his croft, the complainer is entitled to interdict thereagainst as craved." . . .

The respondent averred that he was a crofter at Liorafield and resided there. He admitted that prior to Martinmas 1898 he, in addition to his croft, was tenant of a shop, shed-cellar, and of the artificial beach second referred to in the prayer of the note; that thereafter he had ceased to be the complainer's tenant in these subjects, and had ceded possession of them. He also admitted that he had erected a shed on his croft. He further stated—"The only beach which the respondent intends to use consists of natural rocks sloping up from the sea. The respondent has, in virtue of the Acts 1705, cap. 2, and 29 Geo. II. cap. 23, the right to use these for all purposes of or coincident to bringing in, unloading or loading, drying, and pickling herring and white fish. Further, said rocks are part of respondent's statutory holding, which is *de facto* bounded by the sea on its seaward side. In fixing the fair rent payable by respondent for said holding, in virtue of the Crofters Holdings Act 1886, its situation as contiguous to the sea, and affording facilities for carrying on the trade or industry of white-fishing, was taken into account by the Crofters Commissioners, under an application made by the respondent to have a fair rent fixed for his holding."

The respondent pleaded—"(2) The operations complained of, so far as the complaint is founded in fact, being legal and within the respondent's rights under the Acts 1705, cap. 2, 29 Geo. II. cap. 23, and under the Crofters Holdings Act 1886, the note should be refused, with expenses. (3) The respondent being under no legal obligation to use his croft solely for agricultural or pastoral purposes, the present application for interdict should be refused, with expenses."

The statute of Queen Anne 1705, cap. 2, "authorises and empowers all her good subjects of this Kingdom to take, buy, and cure herring and white fish in all and sundry seas, chanels, bays, friths, lochs, rivers, &c., of this Her Majesty's ancient Kingdom and islands thereto belonging, wheresoever herring or white fish are or may be taken: And for their greater conveniency to have the free use of all ports, harbours, shores, forelands, and others for bringing in, pickling, drying, unloading and loading the same, upon payment of the ordinary dues where harbours are built, that is, such as are paid for ships, boats, and other goods, and discharges all other exactions."

By section 1 of the Act 29 George II. cap. 23, it is enacted, for the further explaining, enforcing, and amending the Act 1705, cap. 2, that "all persons whatsoever, inhabitants of Great Britain, shall, and they are hereby declared to have power and authority at all times and seasons when they shall think proper, freely to take, buy from fishermen, and cure any herrings, cod, ling, or any other sort of white fish in all and every part of the seas, chanels, bays, firths, lochs, rivers, or other waters where such fish are to be found on the coasts of that part of Great Britain called Scotland, and of Orkney, Shetland, and all other islands belonging to that part of Great Britain called Scotland, any law, statute, or custom to the contrary in anywise notwithstanding;" and it is further enacted that any person obstructing such fishing, or taking any gratuity for liberty of fishing, shall for every such offence forfeit £100. Section 17 specifies how the penalties are to be recovered and applied.

By section 34 of the Crofters Holdings (Scotland) Act 1886 (49 and 50 Vict. cap. 29) it is enacted that "'holding' means any piece of land held by a crofter consisting of arable or pasture land, or of land partly arable and partly pasture, and which has been occupied and used as arable or pasture land (whether such pasture land is held by the crofter alone or in common with others), immediately preceding the passing of this Act, including the site of his dwelling-house, and any offices or other conveniences connected therewith, but does not include garden-ground only appurtenant to a house."

By section 1 of the said Act it is enacted that the crofter shall not be removed from the holding of which he is tenant except in consequence of the breach of certain conditions.

By section 8 of the said Act it is enacted that when a crofter renounces his tenancy, or is removed from his holding, he is entitled to compensation for permanent improvements provided that they were, *inter alia*, "suitable to the holding."

Section 32 of the said Act makes it lawful for the Treasury to advance money to the Fishery Board in order that the latter may make advances by way of loan to persons engaged in the prosecution of the fishing industry, "whether crofters or others in crofting parishes," for the building, pur-

chase, or repair of vessels, boats, and gear for fishing purposes, and any other purpose of the like nature for the benefit and encouragement of the fishing industry within the localities above specified, which may be sanctioned by the Fishery Board with consent of the Secretary for Scotland."

A proof was allowed, which disclosed the following facts. Liorafield was situated in the township of Ham. The beaches mentioned in the prayer of the note were rocks above high-water mark. The respondent did not maintain that he had a right to use the beach second referred to in the prayer, which he admitted to be an artificial beach, but he maintained that he had a right to use the beach first referred to in the prayer. The rocks of which it consisted were the property of the complainer, and were not within the limits of the respondent's croft. These rocks being above high-water mark were not part of the shore reached by the tide, but they were swept by the sea in times of storm. They did not form a promontory jutting out into the sea beyond the ordinary line of the shore. The respondent used the rocks for drying white fish, including ling, cod, and tusk (a species of codling) but not herring, which were not caught in Foula. Some slight operations, such as chipping out ruts and rough trenches, had been carried out on the rocks by the complainer's authors or their tenants, by which the rocks were made better fitted for curing fish. As to the shed sought to be removed, the respondent deponed that he erected it on his croft in the autumn of 1898; that he used the shed for storing salt and for fish-curing purposes in the summer; and that when the shed was not wanted for these purposes he put his sheep and cattle into it.

On 27th July 1900 the Lord Ordinary (KINCAIRNEY) pronounced the following interlocutor: — "Finds (1) that the complainer is proprietor of the beaches and rocks *ex adverso* of the respondent's croft, shown on the plan No. 27 of process, and referred to in the record; (2) that the respondent is not entitled to use the said beaches or rocks for the purpose of curing or drying white fish thereon; and (3) that the respondent is not entitled to erect buildings on his croft for the purpose of fish-curing, or which are not designed for agricultural or pastoral purposes; Therefore interdicts, prohibits, and discharges in terms of the prayer of the note of suspension and interdict, and decerns," &c.

Note.—"This case is somewhat involved in details, but raises questions of general importance. It relates chiefly to the use of certain rocks in the island of Foula, in Shetland, for drying and curing white fish. The complainer is proprietor of the island, which he purchased from Dr Scott of Melby in 1894. The respondent is a crofter in the island. His croft, or the land of which it forms part, is called Liorafield. A plan, No. 27 of process, which is by no means so distinct as might be desired, has been produced by the complainer. It purports to show the portions of ground which, in the complainer's view, form the croft. They are coloured green, and the space coloured brown or red shows the adjacent rocks to which the chief question refers. The plan shows a plot of land coloured yellow, called by both parties an artificial beach. It is a space artificially prepared for drying and curing fish. The respondent does not claim right to use it. The plan also shows, by oblong spaces coloured pink, the respondent's house, a store or shop, a cellar, and certain sheds connected with drying and storing the fish. A similar oblong space, coloured black, shows a shed put up by the proprietor, and near it is one of the pink coloured patches, which is a shed recently put up by the respondent, to which the complainer objects.

"The complainer alleges that there are two artificial beaches — the one coloured yellow admitted to be artificial, and the other brown or red, being the rocks about which there is a dispute whether an artificial beach has been formed on them or not. The complainer further states that the store, cellar, and artificial beaches had been let to Lewis Garriock, a fish-curer who gave up the tenancy in 1888, and that they were then let to the respondent as a subject separate from his croft; and that the Crofter Commissioners, in a note to an order dated 6th November 1889, pronounced in an application by the respondent to have a fair rent fixed for his croft, had 'reserved to the landlord his whole rights to the store, shed, cellar, and beaches made or used by him at or near Ham Voe.' There is no very clear proof of the letting of these subjects; but the respondent admits that 'prior to Martinmas 1898 the respondent, in addition to his croft, was tenant of a shop, shed, cellar,' and of one artificial beach, namely, that coloured yellow on the plan, 'at a rent of £5 a-year.'

"In 1898 the complainer formed the resolution of carrying on the fish-curing at Liorafield himself, and for that purpose desired to have the sole occupation of the rocks and beaches, and after certain proceedings he obtained in the Sheriff Court at Lerwick a decree in absence, dated 14th September 1898, against the respondent, decerning him to remove 'from the shop or store, shed, cellar, and beaches at Ham, in the island of Foula.' The complainer further sets forth that the respondent had ceded possession of the shop and cellar, and had removed from the beaches. But he further avers—and this averment, with the respondent's answer, discloses the points in dispute — that the respondent has recently erected another fish-curing shed on the lands of Liorafield, and has brought to the land materials for enlarging that shed or erecting a new building, and intends to take possession of the beaches or part of them as soon as the season permits. The complainer avers that the beaches are necessary for the proper conduct of his fish-curing business.

"The respondent's answer is that the shed (the erection of which he admits) is on his croft, and that he intends to use the natural rocks sloping up from the sea

'for all purposes of or coincident to bringing in, unloading or loading, drying and pickling herring and white fish.' These 'natural rocks sloping up from the sea' are the rocks coloured brown or red on the pursuer's plan, which the complainer alleges to have been artificially prepared for the purpose of fish-curing.

"The first and main question is therefore whether the respondent has right to use these rocks for drying and curing white fish; and I will consider that question in the first place. The fish in question are ling, cod, and tusk (which last is a species of codling), but not herring, which are not caught at Foula. The place in question is not the shore. It is above high-water mark. It is occasionally, perhaps frequently, swept by the sea in times of storm, but it is not reached by the tide. This is proved, and it is necessarily so, because a place covered by ordinary tides could not be used for drying fish.

"The note prays for interdict against entering on two artificial beaches, the one being the space coloured yellow on the plan, to which the respondent makes no claim, and the other the rocks; and with regard to them the respondent has pleaded —'2. The operations complained of, so far as the complaint is founded in fact, being legal and within the respondent's rights under the Acts 1705, cap. 2, 29 Geo. II. cap. 23, and under the Crofters Holdings Act 1886, the note should be refused, with expenses.'

"I am of opinion, in the first place, that the rocks are not part of the respondent's croft. That is proved by the evidence of the surveyor Hoseason, to whom the respondent pointed out the boundaries of his croft, and is expressly admitted by the respondent. The respondent had therefore not the right which he claims of occupying the rocks as a crofter. The Crofters Holdings Act 1886, on which he founds, does not assist him. It might, perhaps, have been expected that the Crofters Act would have conferred some right on crofters to use the rocks adjacent to their crofts, but it does not mention the seaboard at all. The respondent as a crofter, it may be observed, is not a proprietor but a tenant—*Macdonald* v. *Dalgleish*, 12th June 1894, 21 R. 900. The *locus* is not *inter regalia*, nor within the respondent's croft, but is the complainer's private property.

"But the respondent founds on two Fisheries Acts—1705, cap. 2, and 29 Geo. II. cap. 23. He does not found in his pleas on the Act 2 Geo. III. cap. 31, although it was mentioned in the argument. That is the only Act now in force which relates to waste and uncultivated land for the space of one hundred yards beyond the highest high-water mark. It is repealed except sections 11, 12, and 13, and I have no doubt that the unrepealed part of it is inapplicable, because it is an Act made for the encouragement of the white herring fishing, which the fishing at Foula is not. The respondent's defence, therefore, so far as regards the rocks, seems to depend on the other statutes, 1705, cap. 2, and 29 Geo. II. cap. 23.

"But, in the first place, there is a preliminary point, which is this—The complainer, as has been mentioned, founds on a decree of removing of the respondent from 'the beaches at Ham.' It is a decree in absence, but it has never been recalled; and if the beaches at Ham mentioned in it can be identified with the rocks now in question, this decree of removing, while it stands, would seem to be conclusive. Now, I am of opinion that the complainer has succeeded in identifying the rocks now in question with the beaches. The word is used in the plural, both in the decree of removing and in the note by the Crofter Commissioners already referred to; and I think it sufficiently appears that the beaches referred to must necessarily be the two beaches mentioned in the prayer of the note. The use of the word in the plural excludes any other meaning. I am of opinion that on that preliminary ground alone the defence of the respondent as to this part of the case must be repelled.

"Apart, however, from the decree of removing, I am of opinion that the respondent's case as to the right to cure on the rocks in question fails. The complainer contended that the two statutes founded on are either repealed or are in desuetude. I am, however, not able to agree with that argument. The statute of Queen Anne is very lengthy and detailed, and some of its provisions are not now in force. But I see no reason for thinking that the provision that all the Queen's subjects shall 'have the free use of all ports, harbours, shores, forelands, and others, for bringing in, pickling, drying, unloading and loading the same, upon payment of the ordinary dues where harbours are built,' which is the provision on which the respondent founds, is in desuetude, and there is no ground for holding it repealed. It has not unfrequently been pleaded in Court, and it was referred to by the Lord Chancellor in *M'Douall* v. *The Lord Advocate*, 16th April 1875, 2 R. (H. L.) 49, as an existing statute of importance.

"The Act 29 Geo. II. cap. 23, has been in part repealed by the Act 31 and 32 Vict. cap. 45, but sections 1 and 17, so far as relating to Scotland, are excepted from the repeal. It is important, however, to notice that section 2 has been repealed. That section extended the right of fishermen to one hundred yards beyond high-water mark, as in the Act of Geo. III., but that extension of their right has been withdrawn, except in regard to the white herring fisheries. It appears to me that these statutes give no right of use, except to the shore and ports and harbours, and have no operation above high-water mark, and do not interfere with private property. That view is supported by the case of *Hoyle* v. *M'Cann*, 10th December 1858, 21 D. 96, and, in particular, by the opinion of the Lord Justice-Clerk Inglis at p. 101.

"The other cases quoted at the debate turned mainly on the provisions of the White Herring Fisheries Act of Geo. III.,

or on the second section of the Act Geo. II., which has been repealed, and I do not think that they apply to this case.

"It may be observed that the argument of the respondent goes very far, for it affirms the right of all fishermen to dry and cure their fish on any part of any rocks adjoining the sea, although above high-water mark, without any limitation as to the waste or unoccupied character of such lands, or as to their distance from high-water mark. The respondent's argument must go that length if it be sound at all; but I think it clear that the statutes founded on do not support it.

"It is further maintained by the complainer that these rocks form an artificial beach, by reason of the labour which has been bestowed on them in forming an access from the landing-place, and in constructing a trench and vats for holding fish, and are in the same position as the other beach, which is admittedly artificial, and to which the respondent has never made any claim. It is said, therefore, that the ground is not waste or unoccupied. I have some difficulty in understanding this argument, because the statutes founded on, so far as unrepealed, do not say a word about waste or unoccupied land. But I think that there were operations by the complainer or his tenant by which these rocks were fitted for curing fish, and these operations may perhaps fortify his claim to the exclusive use of them, which, however, I think he has, independently of such operations, in virtue of his title of property. I think, further, that the proof shows that it would be exceedingly difficult, if not impossible, to make a beneficial use of these rocks as a place for curing fish, if an indiscriminate use by all fishermen were lawful.

"I am therefore of opinion that the complainer is entitled to interdict against use by the respondent of this beach, and as right to the other beach, that coloured yellow on the complainer's plan, is not now asserted, that the interdict as to the use of the beaches may go out in terms of the prayer.

"This is the principal part of the case, the other points being subordinate, and, I suppose, unimportant when the complainer's right to the exclusive use of the beaches is affirmed. They raise, however, points of considerable novelty. This prayer is for interdict against erecting on the croft any structure designed for curing or storing white fish, or to be used as a shop, or for any other than agricultural or pastoral purposes, and for decree for the removal of a shed recently built by the respondent on said lands of Liorafield.

"Parties seem agreed on the record that this shed last mentioned was built on the respondent's croft, and it must be so assumed, although the evidence seems the other way. I suppose, however, that it was erected by the respondent as ancillary to the curing of his fish on the rocks, and that it may not be of any use otherwise. It is, however, necessary to determine the question which has been raised.

"The two latter parts of the prayer stand on the same footing, and they depend on the position that a crofter is not entitled to build on his croft buildings which are not designed for agricultural or pastoral purposes.

"The complainer maintains that a crofter's right is the right of a tenant, and that the common law as to the inversion of possession, which applies to ordinary tenants, applies to crofters. The respondent, on the other hand, maintains that the right of a crofter is different from that of a tenant at common law, and is exceptional, and dependent solely on the Crofters Act, and that he can do anything on his croft which the Crofters Act does not prohibit. No authorities were quoted which touch this point very closely. The complainer referred to *Stuart & Stuart* v. *Macleod*, 8th December 1891, 19 R. 223, as showing that an inn could not be a holding under the Act, and to *Breadalbane* v. *Orr*, 1896, 4 S.L.T. 118, in which it was decided that subjects which were let, and which included a ferry, as an important part of the subjects let, could not be held to be a croft. I am disposed to hold that a crofter may be interdicted from erecting on his croft any building, which, if it had at first formed part of the subjects leased, would have warranted a decision that they did not form a statutory holding, such as was pronounced in the case of *Breadalbane*, and, if built, would make section 34 of the Act inapplicable. I further consider that the erection of buildings designed for curing and storing fish would be, and that the shed already erected is, an illegal inversion of the use and purpose for which the respondent holds the croft, although I do not say that such erections would be such a breach of the conditions of the holding as would warrant the removal of the crofter under section 1 of the Crofters Act.

"The point, however, is, so far as I was informed by counsel, or am aware, new, and I do not pretend to hold a confident opinion upon it."

The respondent reclaimed, and argued—The decree of removal did not affect the case. It only referred to the shop, &c., which he had left, and to the artificial beaches. It did not refer to the natural rocks, which formed what the complainer called the beach first specified in the note, or to the shed which was erected within the limits of his own croft. The respondent was entitled to dry and cure his fish on these rocks in terms of the Act 1705, cap. 2. This Act was still in force—Opinion of Lord Chancellor Cairns in *M'Douall* v. *Lord Advocate*, April 16, 1875, 2 R., H.L., p. 56; *Bowie* v. *Marquis of Ailsa*, March 18, 1887, 14 R. 649. The rocks in question were forelands within the meaning of the Act. A foreland meant waste and uncultivated land above high-water mark between the shore and the cultivated land—*Scott* v. *Gray*, November 15, 1887, 15 R. 27. Under the Crofters Holdings Act of 1886 the respondent was entitled to use the shed built by him on his croft for curing fish. It was an improvement

suitable to the holding within the meaning of section 8, and to erect a shed for curing fish was not among the things prohibited by section 1. The terms of section 32 showed that the Act contemplated that the fishing industry should be incidental to the working of a croft. In any event, the decree granted by the Lord Ordinary was more extensive than his findings warranted, in respect that it ordered the removal of a shed which was admittedly used in part for sheltering cattle.

Counsel for the complainer were not called upon.

LORD JUSTICE-CLERK—I do not see any ground for interfering with the general result at which the Lord Ordinary has arrived. A crofter is not entitled under the Crofters Act to set up a fishing station on his croft. No doubt there are certain things which he is forbidden to do by the Act. If he does these things he may be deprived of his croft. But it does not follow that everything not specially forbidden is permissible without the consent of the landlord. What is now complained of, although it is not specified in the Act among the things forbidden, may nevertheless be in breach of the rules applicable to a crofting subject. The purpose of a croft is agricultural. No doubt in many cases the crofter is also a fisher; but a croft is an agricultural subject, and is let as such, and the buildings to be erected upon it must be for agricultural purposes only, unless it is otherwise arranged between the crofter and his landlord. In the present case the building was erected for curing fish, and if it was erected and is being used for that purpose by the crofter, I think the landlord is entitled to get such use stopped. If the building had been erected upon a foreland, the respondent would have had a good deal more to say for himself; but Lord Trayner has expressed what is clearly meant by a foreland within the meaning of the Act of Parliament. This is certainly not a foreland.

It is true that from the proof it appears that when the building is not being used for drying fish, it is sometimes used for agricultural purposes. If that is necessary, the respondent may be entitled to keep the erection for these purposes, but the complainer is entitled to interdict against his using it as a fish-drying station,

LORD YOUNG—I am substantially of the same opinion. There are three findings in the interlocutor of the Lord Ordinary—[*His Lordship read them*]. The first finding is not disputed. I think the second finding is right. The third finding is also in my opinion sound in law. The respondent's rights as a crofter do not entitle him to erect buildings within the limits of his croft which are not designed for agricultural or pastoral purposes. I should therefore affirm all the Lord Ordinary's findings.

With respect to the shed, we have no very satisfactory account of it so as to enable us to judge whether or not it ought to be removed. It is explained in evidence that one of the purposes for which it is used is that of sheltering sheep and cattle. It may be an erection quite proper for these purposes and any other agricultural purpose, but I do not think it can be used for the purpose of curing or salting fish even although at other times it might be used for sheltering sheep and cattle.

LORD TRAYNER—The complainer in this case complains that the respondent is making certain use of, and proposing to carry on certain operations on part of the rocks adjoining his croft, and admittedly the property of the complainer. If these rocks are the private property of the complainer, the respondent is not entitled to use them for his purposes unless permission to do so is conceded by the proprietor or unless he is empowered to do so by public authority. It is on the latter ground that the respondent bases his right to do what the complainer seeks to prevent. The respondent's second plea-in-law is as follows:—"The operations complained of, so far as the complaint is founded in fact, being legal and within the respondent's rights under the Acts 1705, cap. 2, 29 Geo. II. cap. 23, and under the Crofters Holdings Act 1886, the note should be refused." Now, the Act 29 Geo. II. cap. 23, cannot aid the respondent, because it has been repealed except sections 1 and 17. Section 1 relates to public rights of fishing, and section 17 deals with the recovery of the penalty for breach of section 1. This Act is therefore out of the case altogether.

The Lord Ordinary says that in course of the debate the respondent also relied upon 2 Geo. III. cap. 31. But that Act is of no avail either because it relates solely to herring-fishing and the respondent is not engaged in herring-fishing. Even if he were, it may be doubtful, perhaps more than doubtful, whether the provision of that statute authorises the respondent's proceedings, but we do not need to consider that, as it is admitted that he is not engaged in herring-fishing.

The respondent is therefore driven back on the Act of Queen Anne. The Lord Ordinary thinks that this Act is still in force and in that I agree with him. It provides that all the Queen's subjects shall have the free use of all ports, harbours, shores, forelands, and others for bringing in, pickling, drying, and unloading herring and white fish. The respondent admits that the only word in this provision on which he can found is the word "foreland," and the question comes to be—Is this a foreland? I understand a foreland to be a rocky promontory jutting out into the sea beyond the ordinary line of the shore. Mr Morton admits that the place in question does not fall under this definition. If it does not, there is no statutory right on which the respondent can base his claim.

Has he any claim under the Crofters Act 1886? By that Act a crofter's holding is defined as "any piece of land held by a crofter, consisting of arable or pasture land or of land partly arable and partly pasture, and which has been occupied or used as arable or pasture land . . . immediately

preceding the passing of this Act, including the site of his dwelling-house and any offices or other conveniences connected therewith," &c. That is the character of the respondent's croft. He may erect a building which is a necessary adjunct to an arable or pastoral subject, but under the Act he is not entitled to turn his croft into a fishing station. That is, however, what the respondent wishes to do.

If neither the Crofters Act nor any of the older Acts entitles the respondent to act as he has done and proposes to do, then he has no right to do so against the wishes of the complainer, the admitted proprietor of the rocks. I therefore am of opinion that the complainer is entitled to interdict.

LORD MONCREIFF was absent.

The Court pronounced this interlocutor:—

"Adhere to the three findings of the Lord Ordinary expressed in said interlocutor: *Quoad ultra* recal the said interlocutor: Interdict, prohibit, and discharge, in terms of the first and second conclusions of the note, but reserving always to the respondent any claim that he may have to use the beaches and rocks *ex adverso* of the respondent's croft, shown on the plan No. 27 of process, and referred to in the record, for the purposes of the white herring fishing, and the complainer's answers thereto, but dismiss the note in so far as it prays for removal of the shed there mentioned, and decern."

Counsel for the Complainer and Respondent — Guthrie, K.C. — Chree. Agents — A. P. Purves & Aitken, W.S.

Counsel for the Respondent and Reclaimer — Kennedy — Morton. Agents — Slater & Rose, W.S.

Friday, February 1.

SECOND DIVISION.

[Dean of Guild Court, Paisley.

BARR *v.* LEE.

Burgh — Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. cap.* 55), *secs.* 152, 153 — *Dean of Guild—Police Commissioners —Power of Police Commissioners to Authorise New Street less than* 36 *feet Wide.*

The Burgh Police Act 1892, sec. 152, enacts that "it shall not be lawful to form or lay out any new street or part thereof, or court, within the burgh, unless the same shall . . . be at least 36 feet wide." Section 153 enacts that "every person who shall . . . form or lay out . . . any new street or court, or any part thereof, or who shall build, raise, or add to any house or premises . . . contrary to the provisions of this Act, unless the same shall have been formally sanctioned by the commissioners on a consideration of the special circumstances of the case, which sanction they are hereby empowered to give, shall forfeit and pay a sum not exceeding £20."

The owners of certain property presented a petition in the Dean of Guild Court, in which they craved warrant for the erection of certain buildings thereon, and the formation of an "improved entrance" to an adjacent street. Objection was taken by the Master of Works that the petitioners' proposed operations constituted the forming of a "new street" within the meaning of the Burgh Police Act 1892, and that the proposed new street was not at least 36 feet wide as required by that Act. The petitioners thereafter applied to the Commissioners, who, "on a consideration of the special circumstances of the case," sanctioned the formation of the proposed improved entrance of a width varying from 30 feet to 32 feet 3 inches.

The Dean of Guild Court held that the Commissioners' sanction was not binding upon them, and refused to grant the warrant craved by the petitioners, on the ground that as the proposed street was a new street, and was less than 36 feet wide, they had no option but to refuse the lining.

Held that the Commissioners had power under section 153, "on a consideration of the special circumstances of the case," to sanction the formation of a new street of less width than 36 feet, and that as they had given their sanction the Dean of Guild Court was not entitled to refuse the warrant craved upon the ground that the proposed new street was less than 36 feet in width.

Observations on the jurisdiction of the Dean of Guild Court in such matters.

Hugh Barr and James Barr, builders, Paisley, in November 1899 presented a petition in the Dean of Guild Court, Paisley, for warrant to erect certain tenements upon the petitioners' property at Wellmeadow. The petitioners averred—"(Cond. 2) The petitioners propose to erect on their said property four tenements of four storeys, with cellars, to be occupied as shops and houses, and one building of one storey and cellars, to be occupied as shops, with relative offices, and which buildings are to front Wellmeadow Street; and an improved entrance to be formed from Wellmeadow to Walker Street, all as shown in and conform to plans, sections, and elevations thereof, made out by William Randall Quinton, architect, Paisley, and herewith produced."

James Lee, Master of Works for the Burgh of Paisley, lodged objections, in which he opposed the petitioners' application. He averred—"(Stat. 2) The said 'improved entrance' from Wellmeadow Street to Walker Street has not yet been formed or laid out as a new street within the meaning of the Burgh Police (Scotland) Act 1892, sections 146 to 153 inclusive, but the proposed operations of the petitioners