of his estates in Scotland were revoked in so far as they are in favour of the defenders Thomas Holme Banks and Mrs Catherine Macdonald or Coningham, by a holograph codicil executed in Liverpool on 21st January 1880?" That is the only question which the Lord Ordinary has decided, or which was argued before us, and we are called upon to decide. The Lord Ordinary observes that the Scottish trust-deed is not named in the codicil of January 1880. That is obvious on inspection; it is not named in it, which is what his Lordship means by "not expressly referred to." On the question whether it is referred to or not I agree with his Lordship. If it is not referred to in it at all, it could not be revoked by it; it would in such a case have no reference to it, and so could not revoke it. Accordingly his Lordship says — "The question therefore is, whether the codicil, though not referring expressly to the trust-deed, declares in sufficient terms an intention to alter it so far as regards the provisions in favour of the defenders Thomas Holme Banks and Mrs Coningham?" And his Lordship is of opinion that the intention to revoke is sufficiently and clearly expressed—that is, that the codicil referring to the Scottish deed, and intended by the maker of this codicil to refer to the Scottish deed, clearly expresses the intention of the maker of the codicil to revoke the Scottish deed in the particulars referred to. The only criticism I would make upon that—and it is really hypercritical—is that the word "clearly" is superfluous—for, if the intention of the maker of the codicil to the effect in question sufficiently appears, the degree of clearness need not be inquired into. Now, I agree that it sufficiently appears from the terms of the codicil that the maker of it intended to exercise the power which he undoubtedly had of revoking the Scottish deed in the particulars in question, and that his intention so sufficiently and satisfactorily to the judicial mind expressed or indicated must have effect. I therefore concur in thinking that the interlocutor of the Lord Ordinary should be adhered to.

Lord Rutherfurd Clark read this opinion—I am of opinion that the interlocutor of the Lord Ordinary should be adhered to.

1. According to its letter, the codicil is a codicil to the last will and testament of the testator. These words, according to their natural meaning, do not refer to any single document, but to the document or documents which regulate his entire succession. The testator, no doubt, confirms a writing of a particular date, which he calls by the name it bears, viz., his last will and testament. But I think that it is referred to by its name and date for the purpose of identifying the document which is to be confirmed, and not as limiting the effect of the codicil, which, as I have said, is according to its terms an addition to his earlier settlement.

2. The cause of revoking the legacies in favour of the defender Thomas Holme Bankes is a cause which applies as well to the Scottish as to the English estates. The view of the testator is that he is unfit to participate in any part of his succession, whether in England or in Scotland.

3. If the codicil is to have any operation at all as to the legacies in favour of Catherine Macdonald, it must apply to the Scottish trust-disposition. I do not think that it can be so read as to deprive an express provision of all meaning, and if it applies in any part to the Scottish settlement, it must, I think, be held to apply to the entire settlement of the testator.

Lord Craighill was absent.

The Lords adhered.

Counsel for Pursuer (Respondent)—Trayner—Guthrie. Agents—Murray, Beith, & Murray, W.S.

Counsel for Defenders (Reclaimers) Thomas Holme Bankes and Mrs Coningham—Robertson—Jameson. Agents—C. & A. Douglas, W.S.

Counsel for Meyrick Bankes' Trustees—Pearson. Agents—Tods, Murray, & Jamieson, W.S.

Thursday, July 6.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

OWNERS OF S.S. "VULCAN" *v.* OWNERS OF S.S. "BERLIN."

Ship—Salvage—Mode of Estimating Amount Due to Salving Vessel.

A steam-ship in the prosecution of her ordinary voyage came upon another steam-ship in a disabled condition through the breaking of her propeller-shaft, and succeeded, without much risk or danger to herself, in successfully towing the disabled vessel into her port of destination; the Court *held* the services so rendered to be of the nature of salvage, and in estimating the amount of remuneration due to the salvor, took into consideration the amount of freight she would have been earning for her owners had she not been detained in rendering these services, and the actual labour of the master and crew.

The steamship "Vulcan" sailed from Middlesborough on the 28th September 1881, bound for Flensburg in Schleswig-Holstein. On the following morning, while on the North Sea, she fell in with the steamship "Berlin" in a disabled condition, with her propellor-shaft broken and with signals of distress flying. The "Vulcan" proceeded to the assistance of the "Berlin," and after considerable difficulty and trouble a tow rope was attached, and the disabled vessel was on the evening of the 29th September safely towed into Leith, the port of her destination. In addition to a miscellaneous cargo valued at about £11,000, the "Berlin" was carrying seventy-eight passengers in addition to her crew of twenty men.

The "Vulcan" thereafter resumed her course and proceeded on her voyage, and the present claim for £4000 in name of salvage, and as compensation for delay, and for services rendered, was made by the owners of the "Vulcan" against the owners of the "Berlin."

The defenders were willing to meet any claims against the cargo (which was consigned to various persons) competent to the pursuers, but maintained that the services rendered were of the nature of towage, and not of salvage; and

that in any event the sum claimed was excessive.

On the 14th March 1882 the Lord Ordinary ordained the defenders to make payment to the pursuers of the sum of £500, the amount tendered by the defenders, which sum his Lordship considered, after taking the proof and hearing the parties, to be sufficient remuneration for the services rendered.

The pursuers reclaimed, and argued—This was a case of salvage, and not merely of towage. The defenders' ship was in great danger, with her screw jammed, and provided with sails fit only to steady the ship but useless to enable her to make any headway. In fixing the amount the Lord Ordinary overlooked the number of human beings on board the salved ship, always an important element in determining the amount of salvage to be paid.

Authorities—*Kenmure Castle*, Feb. 17, 1882, L.R., 7 Prob. Div. 47; *Arnold* ("*Glenduror*"), Feb. 1871, L.R., 3 P.C. App. 589; Maude and Pollock on Shipping, p. 660; *Duncan* v. *Dundee Shipping Co.*, March 1878, 5 R. 742.

It was argued for the respondents — It is difficult to say whether this is a question of salvage or of towage only. The salvors incurred no risk, and at the time she was discovered there was no immediate danger to the salvors' vessel. The sum fixed by the Lord Ordinary was reasonable in the circumstances, seeing that the time occupied was only one day and the salved vessel was of moderate size.

Authorities—*Strathnaver* case, Dec. 1875, L.R., 1 App. Ca. 58; *Glenduror* case, Feb. 1871, 3 P.C. 589; *Kenmure Castle*, Feb. 17, 1882, 7 Prob. Div. 47; Maclachlan on Shipping, p. 619; Jones on Salvage.

At advising—

Lord President—I am clearly of opinion along with the Lord Ordinary that the services rendered by the "Vulcan" to the "Berlin" are to be considered as of the nature of salvage, and not merely of towage. That being so, the only question which is to be determined is, the amount which is to be paid for these services. The "Berlin" is a vessel of 423 tons register, and her engines are of 90 horse power. At the time of the accident she was worth about £10,000, and had on board a general cargo valued at £11,205, the freight upon which was £275, in addition to which she was carrying seventy-eight passengers, whose passage-money amounted to £87, 1s. 6d. This vessel so loaded was discovered by the "Vulcan" in a disabled condition in the North Sea, about 80 miles from the English and 250 miles from the Norwegian coast. When discovered the "Berlin" was on a voyage from Hamburg to Leith, and she seems to have performed the greater part of her journey before the accident in question, namely, the breaking of her propeller shaft, occurred.

From one point of view the weather was certainly very favourable, for it seems to have been a dead calm when the "Vulcan" came up, but it was just that calm which rendered it impossible for the "Berlin" to make way in any direction. It is maintained on the one side that the "Berlin" was in very great peril, because with sails such as she had, and her propeller jammed, it was impossible for her to reach her destination, or indeed any port, as she was unable to make any headway.

The owners of the "Berlin," on the other hand, say that she was not in so desperate a condition—that she could make headway sufficient to answer to her helm, and that if the weather had continued good she could have reached the port of her destination or gained some harbour on the English coast. It is impossible to deny that the "Berlin" was in considerable peril merely because there was no existing cause to produce immediate destruction or damage. She was at the mercy of the winds and waves, and on that account I think that when the "Vulcan" came to her assistance she performed salvage service in the proper sense of the word, which service falls to be estimated in the usual way. The value of the ship and its contents, its cargo and passengers, was considerable; but it is to be observed that the vessel was not of the largest size, and this must be taken into account, in fixing the amount to be paid for the assistance which was afforded to her. The services rendered were no doubt prompt and efficacious, but they were so rendered at no great labour, danger, or exposure to the saloons. The "Vulcan" was on a voyage from Middlesborough to Flensburg, and while so engaged she came upon this disabled vessel, so that we have not in the present case the incurring of any special risk on the part of the salving ship, nor any departure from her ordinary course, or the incurring of any danger from storms or otherwise in carrying assistance to the "Berlin." The only risk that was run was that of the hawser breaking—a risk which always arises when a vessel which has not been built for the purpose, takes another in tow. But the time occupied by the salving vessel is an important, and perhaps the most important, element in the case, for the labour and skill required to bring the vessel into port seem not to have been very great; but I am far from saying that she did not do her best to bring the "Berlin" speedily into port. Now, the value of the time occupied by the "Vulcan" in assisting the "Berlin" may be arrived at in this way. Taken at its utmost, the time lost by the salving ship through rendering assistance to the "Berlin" was seven days. Now, what is the value of this period to the owners of the "Vulcan?" The freight she was to earn for her voyage from Middlesborough to Flensburg was £252, and the time occupied on the voyage was three and a-half days. Now, if we allow a reasonable time for loading and unloading, we find that eight days in all would be taken up in earning that amount, which on an average gives £31, 10s. per day. That sum multiplied by 7, the number of days occupied in accomplishing the salvage, gives us about £220, a little less than half the amount allowed by the Lord Ordinary. Now, this is the utmost that the owners can expect, and the question comes to be, whether the remainder of the sum awarded is a sufficient remuneration for the services of the master and crew? Now, looking to the small amount of labour and skill required, I think that the amount fixed by the Lord Ordinary is in the circumstances fair and reasonable, but even if I might have been disposed to have given a larger amount, supposing the case to have come before us in the first instance, I should be very unwilling to disturb the Lord Ordinary's interlocutor unless the sum which he had fixed was in my opinion entirely disproportionate to the

value of the services rendered. I am therefore for adhering.

LORD DEAS—This case has been very fully and carefully argued, and after all that has been said I am very clearly of opinion with your Lordship that it is a case of salvage, and must be dealt with as such. In looking at the principles involved, and the authorities which determine this question, four elements have to be considered—1st, The enterprise and risk incurred; 2d, the degree of peril of the salved ship; 3d, the amount of labour and time expended; 4th, the value of the ship salved. Now, viewing this case in the light in which it has been presented to us, and considering the principles involved in these four elements, I do not feel called upon to interfere with the discretion of the Lord Ordinary in this matter, and I therefore concur with your Lordship in leaving the judgment undisturbed.

LORD MURE—This is clearly a case of salvage, and not of towage, seeing that the salved vessel was discovered in a disabled condition in the North Sea at a considerable distance from shore, and unable to make any way. There was no doubt some risk and danger to be incurred by the relieving vessel, but this is not enough to entitle the salvor to demand a sum equivalent to what he would have received if great risk had been incurred in taking the disabled ship safely into port. Nor does it appear to me that the danger of the salved ship was such as to warrant us in interfering with the amount which has been fixed by the Lord Ordinary, and therefore I see no reason for differing from the conclusion at which your Lordship has arrived.

LORD SHAND—The object of this reclaiming note is really to determine the amount of salvage which is allowed, for it is not in dispute that the service rendered was of that nature. There can be no doubt that this ship was in some danger, but it was not immediate; she was becalmed, drifting, and could not make headway sufficient to enable her to be steered. The case for the pursuers is that the cargo was of a valuable description, and besides that there was a large number of human lives in danger. Now, it seems to me that the service rendered by the salving vessel on this occasion may very fairly be estimated by the time she was delayed from the prosecution of her voyage at the time when the "Vulcan" discovered the "Berlin." It is said that the weather was favourable; it was a dead calm; but it was just the calm which rendered it impossible for the "Berlin" to move, and it is urged that her peril was great because with such sails as she had, and with her propeller jammed, it was impossible for her to reach any port, as she could not answer her helm. The owners of the disabled vessel, on the other hand, say this is not so, and that with favourable weather the "Berlin" could easily have made Leith or some English port. These seem to be the extreme opinions held upon either side. That there was no existing cause to produce immediate damage to or destruction of the ship may be true enough, but nevertheless she was at the mercy of the waves. Upon the whole case it seems to me that the reclaimer has failed to show sufficient ground to warrant us in disturbing this interlocutor, and I agree with your Lordship in thinking that the decision of the Lord Ordinary ought to be adhered to.

The Lords adhered.

Counsel for Pursuers and Reclaimers—Guthrie Smith—Keir. Agents—T. & W. A. M'Laren, W.S.

Counsel for Defenders and Respondents—Trayner—Dickson. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Friday, July 7.

FIRST DIVISION.

(Before Lord President Inglis and Lords Deas and Shand.)

[Lord Kinnear, Ordinary.

CLARK *v.* CITY OF GLASGOW BANK.

Public Company — Liquidation — Compromise — Obligation on Contributory making Complete Surrender.

The liquidators of a company which was in course of liquidation accepted a compromise from a shareholder who was unable to meet the second call upon stock held by him, and agreed to grant him his discharge upon the footing of a complete surrender of his estate. At the date of this agreement the shareholder held *pro indiviso* along with his partner in business certain heritable property, but subsequently he and his partner executed an agreement and declaration of trust, and the shareholder a disposition, by which deeds the said heritable property was conveyed to the two partners in trust for their benefit, each to the extent of one-half. The Court *held* that the liquidators were not bound to accept an assignation of the contributory's interest in the trust, and that the agreement between them and the shareholder would not be implemented by anything short of a disposition of the heritable subjects upon which infeftment could proceed.

George Wilson Clark, the complainer, was a shareholder of the City of Glasgow Bank, and held at the time of its stoppage in October 1878 £2500 of stock of the bank. The first call of £500 per £100 of stock held by Clark was paid by him, but he was unable to pay in full the second call of £2250 per £100 of stock, which on the stock held by him was £56,250. In the month of May 1879 a compromise was entered into between him and the liquidators, whereby, on the conditions therein specified, he was discharged of the said second call, and of a balance standing at his debit in account-current with the bank.

Part of the estate which Clark undertook to hand over to the liquidators in exchange for his discharge consisted of heritable property, and it was with reference to the transfer of that heritable property that the present case arose.

For many years Clark had carried on business in Glasgow as a corn factor in partnership with a Mr Robert Gibson, under the firm of Gibson & Clark. This partnership was dissolved in 1864, when Gibson retired from business. In 1855, during the subsistence of the partnership, certain