recent times used for purposes of burial, and it was proposed to disturb human remains when it was neither decent or proper that they should be disturbed. There is no case here of any such kind. The ground proposed to be taken for the extension of the church was formerly the common burying-ground of the parish of St Cuthbert's, and there will therefore be no interference with any patrimonial rights. Again, there would never be any further burials in this part of the churchyard in any case, because the common burying-ground was closed by the authority of the Sheriff in the year 1874. Further, the seventeen years which have elapsed since 1874 make it impossible that there should be any interference with the graves where recent interments have taken place, and it was also brought out in the proof that in such places as this human remains return, as the Lord Ordinary says, to their 'kindred dust' in the course of seven or eight years.

I think, therefore, that it is not necessary that any great case of expediency should here be made out, because I cannot see that there can be any great interference with the feelings or rights of anyone. There would indeed have been as much or more interference with the graves in question if the ground had remained a burial ground, as in that case they would ere this have again been used for the purposes of burial.

The question remains, whether a case of expediency or necessity has been made out, and I think enough has been shown with regard to the safety of the congregation in the matter of access, their health in the matter of ventilation, and the necessary conveniences and comforts of a church like this at the present time, to justify what seems to me to be a case of very limited interference with other rights. I think it is also proved that the necessary enlargement of the church cannot be made in any other direction than the proposed one. I accordingly have no hesitation in saying that the Lord Ordinary has come to a right conclusion.

LORD M'LAREN—I concur with your Lordship in the chair, and I have really very little to add. The enlargement of the church is proposed to be made by the kirk-session mainly out of funds provided by the congregation and by public subscripton, but I think the sum of £2000—which was considered to represent truly the sum necessary to put the existing church in proper repair—has been contributed by the heritors. In all that the kirk-session propose to do they have the support of the heritors, and therefore I think the case must be taken, in any question of power, just as if the heritors were themselves coming forward by a resolution of the majority proposing to do this thing. I conceive that the whole administrative title to the church and the churchyard is represented by the heritors and the kirk-session who in this matter are agreed. Then I think that unless we are to say that under no circumstances can a parish church, planted in the middle of a churchyard, be enlarged, it follows that the administrators of the churchyard and the fabric erected upon it must have the discretion of encroaching upon that part of the churchyard which has been appropriated to sepulture, and that is in most cases the whole of the part unoccupied by the fabric of the church. They are the best judges as to the direction in which the enlargement is to proceed, and as to the time of making it, and if they exercise their discretion properly and according to law, they would of course not make an extension which would involve the disturbance of the ground in which interments had recently taken place. Now, it is admitted that if such a thing were proposed—and I do not think it likely that any body of heritors would propose it—the Court might interfere, because the discretion of this public body, if exercised in a manner contrary to law, is open to challenge. But in my opinion no case has in fact been made out for interfering with that discretion. It does not appear to me that any injury has been qualified to anyone, or that there is any disturbance of human remains of a nature or in a degree different from what would necessarily take place if there had been no burial in this ground for a hundred years. I think there are ample precedents to justify the course which the heritors and kirk-session here propose to take, and that they are entirely within their rights.

LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuer—Taylor Innes—M'Lennan. Agent—John Pairman, S.S.C.

Counsel for the Defenders—D.-F. Balfour, Q.C.—Ure. Agents—Davidson & Syme, W.S.

Saturday, June 6.

SECOND DIVISION.

[Lord Low, Ordinary.

BUCHAN AND OTHERS *v.* SUMMERS AND OTHERS.

Shipping—Jurisdiction—Summary Mode of Settling Dispute as to Amount of Salvage by Justices of the Peace or the Sheriff—Merchant Shipping Act 1854 (17 *and* 18 *Vict. cap.* 104), *sec.* 460.

The Merchant Shipping Act 1854, by sec. 460, provides that "Whenever any dispute arises . . . between the owners of any ship . . . and the salvors as to the amount of salvage, and the parties to the dispute cannot agree . . . such dispute shall be referred to the arbitration of any two justices of the peace [or in Scotland, by sec. 501, to the sheriff, including the sheriff-substitute] resident . . . at or near the place

where such ship or boat is lying or at or near the first port or place . . . into which such ship . . . is brought after the occurrence of the accident." . . .

On 2nd October 1890 the fishing boat "Christina" of Peterhead, while off the Yorkshire coast, rendered certain salvage services to the fishing boat "Restless Wave," also of Peterhead, and assisted it into Scarborough Harbour. A dispute thereupon arose as to the amount due for such services, but no legal proceedings were taken until 14th November 1890, when the salved boat had returned to and was lying at Peterhead. The salvors then presented a petition in the Sheriff Court there against the owners of the said boat and against the insurers thereof, under the above and relative sections of the Merchant Shipping Act 1854, to have a diet fixed for ascertaining the amount due for their services.

Held that the summary procedure contemplated by the Act was competent only at the first place to which the boat salved had been brought after the accident—in this case Scarborough—and that consequently the Sheriff had no jurisdiction under the statute to entertain the salvors' petition.

Upon 2nd October 1890 the fishing boat "Christina" of Peterhead performed certain salvage services to the fishing boat the "Restless Wave," also of Peterhead, while off the Yorkshire coast, and assisted it into Scarborough Harbour. The owners of the "Restless Wave" refused to pay the sum thereupon demanded as salvage, and upon 14th November 1890, after both boats had returned to Peterhead, Alexander Summers, fisherman, Peterhead, and others, the salvors, presented a petition in the Sheriff Court there against Peter Buchan junior, fisherman, Peterhead, and others, the owners of the "Restless Wave," and against the North British Fishing Boat Insurance Company, Limited, the insurers thereof, to have a diet fixed for the trial of the cause to determine the amount to be paid for said services, and to have the defenders ordained, jointly and severally, to pay to them the sum of £30 or such other sum as the Court might think reasonable in terms of the Merchant Shipping Act 1854 (17 and 18 Vict. cap. 104), which provides by sec. 460, that "Whenever any dispute arises . . . as to the amount of salvage, and the parties to the dispute cannot agree as to the settlement thereof by arbitration or otherwise, then, if the sum claimed does not exceed £200, such dispute shall be referred to the arbitration of any two justices of the peace resident as follows—(that is to say) In case of services rendered to any ship or boat . . . resident at or near the place where such ship or boat is lying, or at or near the first port or place in the United Kingdom into which such ship or boat is brought after the occurrence of the accident, by reason whereof the claim to salvage arises." By section 461 power is conferred upon the justices "To call to their assistance any person conversant with maritime affairs as assessor, or they may . . . appoint some person conversant with maritime affairs as umpire to decide the point in dispute, and such justices . . . shall make an award as to the amount of salvage payable . . . within forty-eight hours after such dispute has been referred to them and the said umpire within forty-eight hours after his appointment." . . . By sec. 464 "No appeal shall be allowed unless the sum in dispute exceeds £50." By section 501 of the Act it is provided that "All matters and things that may in pursuance of the eighth part (in which section 460 occurs) of this Act be done by or to any justice or any two justices, may in Scotland be done also by or to the sheriff of the county, including the sheriff-substitute."

The defenders were cited to appear upon 5th December 1890, but upon the case being called in Court on that day, their agent objected to the case being proceeded with, as the Sheriff-Substitute had no jurisdiction to act as arbiter in said dispute under the sections libelled in said petition.

The Sheriff-Substitute (HAMILTON-GRIERSON) repelled the objections and adjourned the trial to 9th January 1891.

Thereupon the defenders brought a note of suspension and interdict against the pursuers and against the said Sheriff-Substitute to have the latter interdicted from acting as arbiter or judge in said proceedings, and the other respondents interdicted from proceeding with said petition or leading evidence in support of the claim made by them therein.

Upon 6th January 1891 the Lord Ordinary (LOW), upon caution, passed the note and granted interim interdict, but after a record had been made up on the note of suspension and interdict and closed, and parties had been heard in the procedure roll, his Lordship on 19th March repelled the reasons of suspension, recalled the interim interdict, and refused the prayer of the note.

"*Opinion.*—From the answers for the complainers to the respondents' statement of facts it seems to be clear that the dispute in respect to salvage, in regard to which the proceedings in the Sheriff Court were instituted, arose after the boat to which the services were rendered had left Scarborough and proceeded to Peterhead. The main question at issue turns entirely upon the construction of the 460th section of the Merchant Shipping Act of 1854. That section provides that—[*reads as above*].

"The respondents brought their claim in the Sheriff Court of Aberdeenshire, because when the dispute arose the boat to which the services had been rendered was lying at a place within that county.

"The complainers' contention was this—Under the 460th section the claim may be brought before two justices resident either, first, at or near the place where the boat is lying, or, second, at or near the first port or place where the boat is brought after the occurrence of the accident. The complainers maintain that the concluding words 'after the occurrence,' &c., apply to both

alternatives, and that the first alternative, the place where the boat is lying, contemplates the boat saved being beached and not brought into any port.

"I cannot accept this construction of the statute. If the first alternative was inserted to meet the case of the boat being beached, it was unnecessary, because the words of the second alternative, the first place where the boat is brought after the occurrence of the accident, are clearly applicable to such a state of matters; but further, the claim is to be referred, 'whenever any dispute arises, . . . and the parties cannot agree as to the settlement thereof,' and it is then to be referred to two justices resident 'at or near the place where the ship or boat is lying.' The time is when the dispute arises, and the place is where the boat is then lying. The dispute in the present case arose when the boat was lying at Peterhead, and therefore the claim fell to be referred to two justices resident at or near Peterhead or to the sheriff of the county.

"The complainers further contended that the Legislature could not intend that the salvors should be entitled to bring their claim at any place where the boat saved might happen to be, no matter how far that place might be from the scene of the salvage and the residence of the witnesses whose evidence might be necessary to the determination of the claim. I do not think that considerations of supposed convenience, even if they were stronger than they are in the present case, could prevail against what, in my judgment, is the plain meaning of the words of the Act; but it is not unimportant to observe that in England it is expressly provided by statute that the claim may be brought at the place where the vessel is when proceedings are instituted. By the Act 25 and 26 Vict. cap. 63, sec. 49, it is made competent for a County Court Judge to exercise the same jurisdiction in salvage cases as is given to two justices. This provision is analogous to that of the 501st sec. of the Merchant Shipping Act in regard to sheriffs in Scotland. Then by Act 31 and 32 Vict., cap. 71, certain provisions are made for the exercise by the County Court of Admiralty jurisdiction, and by the 21st section it is enacted that proceedings shall be commenced '(1) in the County Court having Admiralty jurisdiction within the district of which the vessel or property to which the cause relates is at the commencement of the proceedings.'

"The complainers further contended that the note should be sustained, at all events to the extent of holding the proceedings in the Sheriff Court to be incompetent in so far as directed against the North British Fishing Boat Insurance Company, on the ground that it is only the owners of the boat against whom the claim of salvage lies. The boat was insured with the company for the period during which it was engaged in fishing at Scarborough, and it is not disputed that in the event of salvage being found due the company will have to pay at least three-fourths of the amount. Further, complainers' statements show that the secretary of the company, who is also the other complainers' agent, negotiated with the respondents on the footing that the company was truly the party interested in the matter. In these circumstances I do not think that it was unreasonable for the respondents to convene before the arbiter the party having the chief interest in securing that the question was properly laid before him. It is true that the application by which the proceedings before the Sheriff were instituted asks him to ordain the complainers, jointly and severally, to pay the salvage to the respondents. I think that probably the respondents are not entitled to decree directly against the company, but that is a matter with which, I think, that the Sheriff may properly be left to deal. I may add that no separate pleadings have been lodged, nor has any separate appearance been made for the company either here or in the Sheriff Court."

The complainers reclaimed.

At advising—

LORD TRAYNER—The facts out of which the present question arises seem to be these—Early in the morning of 3rd October last the "Restless Wave," a fishing boat belonging to the complainers, was caught in a gale when about eight or nine miles off the Yorkshire coast; her mast gave way and fell over the side, leaving her, as the respondents allege, in a helpless and disabled condition. The respondents in their boat the "Christina," observing the condition of the "Restless Wave," bore down upon her, and towed her safely into Scarborough Harbour in the course of the same day. Immediately after both boats had got into Scarborough the respondents put forward a claim for salvage, but their claim as then made was not admitted. Both boats some short time thereafter proceeded to Peterhead (the port from which they both hail), and then on 14th November last the respondents commenced the proceedings complained of before the Sheriff-Substitute, in order to have their claim for salvage ascertained and decree therefor pronounced. The respondents' petition to the Sheriff was founded upon the 460th and following sections of the Merchant Shipping Act 1854. The complainers objected that the Sheriff-Substitute had no jurisdiction under the statute libelled, but that objection having been repelled, the complainers brought the present suspension and interdict to have the Sheriff-Substitute interdicted from proceeding with the said petition. The Lord Ordinary has repelled the reasons of suspension and dismissed the note, holding that the Sheriff-Substitute had and has jurisdiction to deal with the petition presented to him under the sections of the statute there libelled and founded on. That judgment is now before us for review.

I agree with the Lord Ordinary in thinking that the question presented for decision depends upon the construction of the 460th section of the Merchant Shipping Act, but

my agreement with the Lord Ordinary ends there. I cannot adopt the construction which the Lord Ordinary puts upon that section.

By the section in question it is provided that—[*reads*]. The jurisdiction thus conferred is special and extraordinary. It is extraordinary in the sense that what the statute authorises the justices or the sheriff to do could not be done by them in the exercise of their ordinary jurisdiction; and special in regard to the manner and time within which the jurisdiction is to be exercised—special also in this respect, that the judgment of the justices or sheriff on the salvors' claim is to be final in all cases where the sum awarded does not exceed £50. In short, what the statute provides for is a court of arbitration, to which the parties must submit if its authority is invoked either by the salvor or the owner of the property salved, and by which the disputed claim shall be determined (finally, as I have said, in certain cases) practically at once, and without either the procedure or the necessary delay arising from the procedure of ordinary courts of law. The respondents might have taken the benefit of that statutory provision undoubtedly, had they chosen to do so, at Scarborough immediately after their salvage service had been rendered. But the questions are, Can they now at Peterhead adopt this statutory mode of having their claim determined, and has the Sheriff-Substitute there any jurisdiction under the statute to entertain the respondents' demand? Both of these questions must, in my opinion, be answered in the negative. The jurisdiction conferred by the statute—extraordinary and special, as I have pointed it out to be—can only be exercised by the persons and in the circumstances specified in the statute. According to my reading of the statute, the persons to exercise the jurisdiction are the justices or sheriff resident at or near the place where the salvage ship is lying, or at or near the first port or place to which she has been brought after the salving—that is to say, the justices or sheriff resident at or near the first port or place of safety which the salved ship has reached after or by reason of the salving, whether that place be a harbour in which she floats, or a beach where she is stranded, or a dock or slip on which she has been placed for repair. The Lord Ordinary thinks that this statutory jurisdiction is conferred on the justices or sheriff resident at or near the place where the salved ship is lying when the dispute arises as to the amount of the salvors' claim, and holds that these two conditions are satisfied in the present case, because the dispute as to the salvors' claim arose at Peterhead, and the "Restless Wave" was then lying there. But I find nothing in the statute to warrant the view that the time when the dispute arises enters into the matter of conferring the jurisdiction at all. The words upon which the Lord Ordinary bases his view—and it was the view urged upon us in argument by the respondents—are these, "Whenever any dispute arises," &c. These words, however, do not indicate a point of time; they point to a certain event. They are not equivalent to "at the time when any dispute arises," but "in the event of any dispute arising." If the Lord Ordinary's view was the right one, then the time of the dispute must be combined with the place where the salved ship is lying; you must have the dispute arising at the place where the salved ship is lying at that particular time. This might rarely occur, except in the case which I think the statute above contemplated and guarded for, namely, the salvors' claim advanced and disputed at the first place of safety to which the salved ship had been brought by the salvors. In short, I think the statute provides a special remedy for settling salvage claims where such claims are made matter of dispute, as the place of safety to which the salved ship has first been brought after the occurrence which gave rise to the claim. If this special remedy is not then and there resorted to, the salvors' claim can only be enforced by an appeal to the ordinary courts of law. It appears to me that this view of the statute is supported by the consideration that the justices or sheriff are required to issue their award within forty-eight hours of the time when the dispute has been referred to them. They are entitled, no doubt, to extend that time by a writing under their hand, but the contemplation of the statute is that the award will be issued within the time there specified. Now, such summary disposal of the dispute is quite intelligible if the dispute is to be taken up at the first place of safety which the salved ship shall reach. The salvors are there; the crew of the salved ship are also there; the salved ship itself is there, open to the inspection of the justice or any "person conversant with maritime affairs," whose assistance they are entitled to take. In these circumstances the justices may quite well issue their award speedily. It is not contemplated, I think, that they shall have pleadings and proof, and pronounce judgment thereon as a court of law. They are to determine as arbiters a question which it is in the interest of all concerned should be determined at once. But it is difficult to conceive how this summary mode of settling the dispute can be applied if the dispute arises months after the salvage services have been rendered, and many miles away from the place to which the salved ship was first brought.

The Lord Ordinary's judgment proceeds upon the view that the dispute as to the salvage arises at Peterhead. But is it quite clear that that is so? It appears to me, taking the statements on record, that the dispute as to the salvage arose at Scarborough. The respondents aver that immediately after the two boats got safely into Scarborough the demand for salvage was made. The complainers admit this, and say that their answer to the demand was, that it was extravagant; and if that statement is accepted, then the dispute arose in Scarborough, and not in Peterhead. But whether the complainers' statement is accepted as made or not, it is clear,

on the respondents' averments that they made their claim at Scarborough, and that their claim was not then admitted. They had undoubtedly some claim, and therefore the only question was as to its amount. Now, it seems to me that if the amount claimed was not admitted, a difference or dispute as to the amount claimed at once arose. And thus the dispute as to the salvage claim arose at Scarborough, where the salved ship was lying, and the justices at Scarborough alone had the right to determine, under the statutory jurisdiction, the amount to be awarded to the salvors. It is not necessary, however, to press this view after the opinion I have expressed as to the meaning of the 460th section of the Act.

There is just one other point to be noticed. The respondents directed their petition not only against the owner of the salved ship, but against the company with which the salvage ship was insured. I think it quite certain that the statutory jurisdiction does not cover such a claim. The justices and Sheriff can only pronounce an award against the owners of the salved property, as it is only in disputes between the salvors and such owners that they are authorised to pronounce any award at all. In any view, therefore, as regards the insurers, the Sheriff had no jurisdiction. But it is unneccessary to make any special finding with regard to them, for on the whole matter I am of opinion that the reasons of suspension should be sustained and the interdict formerly granted declared perpetual.

The LORD JUSTICE-CLERK and LORD RUTHERFURD CLARK concurred.

LORD YOUNG was absent.

The Court recalled the Lord Ordinary's interlocutor, sustained the reasons of suspension, and declared the interdict formerly granted perpetual.

Counsel for the Complainers and Reclaimers — Graham Murray — Salvesen. Agent—Wm. Croft Gray, Solicitor.

Counsel for the Respondents—Jameson—Shaw. Agent—R. C. Gray, S.S.C.

Tuesday, June 9.

SECOND DIVISION.

[Sheriff of Aberdeen.

DAVIDSON *v.* DAVIDSON.

Sheriff Court — Citation — Sheriff Court Amendment (Scotland) Act 1870 (33 and 34 Vict. cap. 86).

In an action in the Sheriff Court at Aberdeen the person called as defender lived in the Peterhead district of Aberdeen. In 1870 the Secretary of State, under the provisions of the above-mentioned Act, had prescribed that all cases, civil or criminal, arising in the Peterhead district should be tried within that district, and also prescribed the court days to be held there for the purpose of the despatch of business. The Sheriff-Clerk refused to grant a warrant to cite the defender to the Aberdeen Court, and when a motion was made to the Sheriff-Substitute to that effect he also refused to grant the warrant.

An appeal therefrom *dismissed* as incompetent.

The Sheriff Court Amendment (Scotland) Act 1870 (33 and 34 Vict. cap. 86), sec. 13, provides — "It shall be lawful to Her Majesty by one of her Principal Secretaries of State to prescribe from time to time the number of courts to be held by the several sheriffs of Scotland who shall be appointed after the passing of this Act, and the times and places for holding such courts."

Upon 10th June 1885 the Right Honourable Sir William V. Harcourt, one of Her Majesty's Principal Secretaries of State, in pursuance of the powers contained in the above section, prescribed that from and after that date the following arrangements should take effect with respect to the Sheriff Courts in the Peterhead district of the county of Aberdeen—"(1) All cases, civil and criminal, arising in the district of the county of Aberdeen, hitherto known as the Peterhead district, shall be called, tried, and proceeded with within the said district. (2) A court shall be held at Peterhead once a week, on a stated day, during three weeks out of every four, according to such regulations as may be prescribed by the Sheriff, for the despatch of all business, civil and criminal, competent in the Sheriff Court."

In May 1891 George Davidson, residing in Baltic Street, Aberdeen, brought an action against Ann Davidson, residing at Gallahill, St Fergus, in the county of Aberdeen, to have her ordained to produce an account of her intromissions with the estate of a deceased brother, in whose executry estate the pursuer claimed a share.

As the defender was resident in the Peterhead district, the Sheriff-Clerk at Aberdeen refused to grant the pursuer a warrant to cite the defender to the Court at Aberdeen.

The pursuer made application to the Sheriff, and upon 26th May 1891 the Sheriff-Substitute (GRIERSON) issued this interlocutor:—"The Sheriff-Substitute having heard the pursuer's agent in his motion for a warrant to cite the defender to the Court at Aberdeen in respect of the order of the Secretary of State of date 10th June 1885, refuses the same."

The pursuer appealed, and argued — It was competent to appeal this interlocutor, and have it remitted back to the Sheriff Court with instructions to cite the defender to attend the Court at Aberdeen. It had been held that where the Sheriff had dismissed an action because it was not brought in a certain form it was competent to advocate the cause to the Court of Session—*Whyte* v. *Gerrard*, November 30, 1861, 24 D.