to give an undue advantage on the one side, and to subject the petitioners to an undue disadvantage upon the other. In this question it is impossible to leave out of view the amount of cartage done by the two parties thus contrasted. It is in evidence that in October and November 1882 the goods carted from the station by Cameron & Co. amounted to 152 and 141 tons respectively as the daily average, while Pickford & Co. only carted 9 and 10 tons respectively per day. Now, the arrangement for the division of the goods at the station for distribution over the town may be very useful for large quantities, and not at all necessary when the quantity was small. But I do not rest my opinion upon that consideration. The Caledonian Railway Company in this matter use their own premises for their own carters. They are not bound to give the use of their premises to other carters to facilitate their operations. Pickford & Co. may use their own premises for such purposes. The Caledonian Company is not bound to give them the use of theirs.

The third ground of complaint is as to the way in which the respondents settle accounts with the petitioners as compared with others. It is only necessary to say that there is no evidence whatever to support this charge.

The fourth ground of complaint is—(reads). Upon this matter it appears that there are two small boxes within the premises of the railway company used by the company's carters for the transaction of their business in carting. This objection falls to be dealt with in the same way as that under the second head—viz., the division of the goods. In this matter of the boxes as in that, the company were not giving one trader an undue advantage over another. They were merely affording their own servants facilities for transacting their own business.

There remains only the first ground of complaint, that is—(reads). There was appended to the petition a very detailed statement of 62 cases in which an alleged contravention of the statute had occurred. Now, it is admitted that in so far as these are concerned seven of them only have any evidence to support them. These are cases in which goods were not labelled or addressed to the petitioners, but in which, as they allege, the goods were consigned to them; and they maintain that with regard to these seven cases the company have contravened the statute. The question is, is that true? It appears to me that in treating of this matter the petitioners have left wholly out of view the interests of the sender and receiver of goods, seeming to think that goods were carried merely for the benefit of the carrier. What are the facts in connection with these cases? A certain document was handed by the Midland Railway Company to the Caledonian Company which has been called an invoice. This is a new use of that word, and one that is apt to mislead. The document rather corresponds in character to a ship's manifest, or to what in the old coaching days used to be called a way-bill. Now, with this way-bill the sender of goods has nothing whatever to do. He knows nothing of it and cannot be bound by it. We must take it that the sender transmits his goods to the address of his Glasgow consignee. In the case which was taken as an example the goods were addressed to the consignee by his name and address in Glasgow. The only way in which the petitioners could pretend an interest in these goods was that in a column of the way-bill headed "To whose care," there occurred the entry "P. & Co." which there could be no reasonable doubt meant the petitioners. There is no evidence who made that entry. The petitioners say they did not; that they did not take the goods to the station from which they started. It is not alleged that the sender made the entry, so that it must have been made by the Midland Company itself. Is then that company to bind the Caledonian Company in opposition to the wishes of the consignor who desires the goods to be delivered at a particular address in Glasgow? It appears to me that so far from this being a good ground of complaint against the respondents, that they would not have been justified in attending to such orders. Suppose, in place of the petitioners, the column had contained the name of some carriers in whom the respondents had no confidence, would they have been justified in handing over the goods to them? They might by so doing have involved themselves in responsibility of a very serious kind. There is no evidence that the respondents refused to deliver to the petitioners goods consigned to them, and therefore no room for complaint on this head. There is indeed one individual case in which goods did bear to be consigned to Pickford & Company. In this case the way-bill bore in the column appropriated to the name of the consignee "Andrew Duggans of Glasgow, care of P. & Co." If this had represented a system, I should have been inclined to say it was illegal. I express no opinion whether it would have been a contravention of the Act of Parliament. The Caledonian Railway Company, however, do not propose to repeat it, and as an isolated case I do not attach much importance to it. It certainly would not justify a complaint such as we have before us. But then it is further said that when consignees of goods had directed goods to be delivered to the petitioners, the respondents had not done so. The case was that a general order had been given by a consignee as to the delivery of all goods consigned to him. This falls under the first branch of the case of Wannan *v.* The Scottish Central Railway Company, 2 M'Ph. 1373, in which the Court had held that a railway company was not bound to give effect to such general directions. Apart from this, however, I have the greatest difficulty in thinking that a failure on the part of the respondents to obey the orders of a consignee would entitle the petitioners to complain. The matter is, however, ruled by the case of Wannan. That exhausts the whole of the petition upon the report and proof, and when I consider the miserably small size to which this clamorous petition and complaint has shrunk, I cannot help characterising the proceedings as most frivolous.

The other Judges concurred; and the Court therefore, seeing that the petitioners had failed to establish any grounds of complaint to justify the interference of the Court, refused the prayer of the petition and found the respondents entitled to expenses.

Counsel for Petitioners—Patton and A. Moncrieff. Agents—Wilson, Burn, & Gloag, W.S.

Counsel for Respondents—Clark and Johnstone. Agents—Hope & Mackay, W.S.

Friday, June 1.

FIRST DIVISION.

MAXWELL AND OTHERS *v.* MAGISTRATES OF DUMFRIES.

Bridge Dues—Right to Levy—Usage. Held that the extent of a right to levy Bridge Dues was

to be fixed by immemorial usage, and that dues could not be exacted which had not been levied for forty years.

This action was raised at the instance of Wellwood Herries Maxwell of Munches, Mark Sprot Stewart of Southwick, Robert Maxwell Witham of Kirkconnell, Robert Kirkpatrick Howat of Mabie, Wellwood Maxwell of The Grove, Francis Maxwell of Breoch, William Stewart of Shambellie, Patrick Dudgeon of Cargen, Walter M'Cullock of Ardwall, and James Biggar of Maryholm, all in the Stewartry of Kirkcudbright, and Alexander Oswald of Auchencruive, Ayrshire, and of Cavens in the said Stewartry, against the Provost, Magistrates, and Town Council of Dumfries, for themselves and as representing the whole inhabitants and community of the burgh. It concludes for reduction of (1) A pretended table of the customs and duties said to be belonging to the Town of Dumfries, referred to in an Act of the Council of the said burgh, dated the 5th day of November 1772; (2) The said pretended Act of Council, in so far as the same relates to the said bridge customs and duties; (3) A pretended table of the said bridge customs and duties, said to be belonging to the said town, and referred to in the said Act of Council, whereby the same are pretended to be defined, and explained, and converted into sterling money, and imperial weights and measures, in conformity with a pretended Act of Council of the 16th day of October 1854; and (4) The said last-mentioned pretended Act of Council itself, in so far as the same relates to the said bridge customs and duties, and bears to define, explain, and convert the same into sterling money, and imperial weights and measures. There were also conclusions for declarator that the defenders have no right or title to levy, collect, or demand any dues, rates, tolls, customs, or charges of any kind whatsoever, at the said new bridge or elsewhere, from or in respect of any person, bestial, or articles of any kind that may pass, or be conveyed, along the new bridge over the Nith between the burghs of Dumfries and Maxwelltown, or may enter or leave the said burgh of Dumfries, whether going to or coming from the territory of the said burgh of Dumfries, or market thereof, or passing through the said burgh, and whether the same are set down in either of said tables or not, or are alleged to be included within the terms, "corded packs," "merchandise," or "corded packs of merchandise," or under any other general term in said tables, or either of them, except from and in respect of such persons, bestial, or articles, and at such rates as shall appear in the course of the process to follow hereon to have been charged, collected, or demanded by, and paid to, the defenders or their predecessors, according to the immemorial usage hitherto subsisting. The action farther concluded that a table should be framed showing the precise dues, rates, tolls, customs, or other charges which the defenders may be entitled to levy at the said new bridge, and that no other than the rates so ascertained should be levied in time coming.

The pleas in law for the pursuers were—1. The dues and customs enumerated in the tables called for and sought to be reduced, and those now claimed by the defenders, and the Acts of the Council of the burgh of Dumfries above specified, in so far as relating to said dues and customs and tables not being authorised by statute, charter, or usage, and being altogether without lawful authority, the said tables and acts ought to be reduced and set aside. 2. The said tables being inconsistent with one another, and being unsupported by immemorial usage, ought to be reduced and set aside. 3. The table of 1772 being expressed in Scots money, and in obsolete weights and measures, and having, moreover, fallen into desuetude, and been superseded by usage inconsistent therewith; and the table of 1854 having been merely an unauthorised attempt to revive, and explain, and extend the application of that obsolete table, no effect can now be given to either of said tables. 4. In no view are the defenders entitled to levy tolls, customs, or duties at higher rates, or from or in respect of persons, bestial, and articles, other than according to the usage which shall be proved to have prevailed from time immemorial prior to the institution of the present action, and the said usage not having been uniform, the whole matter should now be judicially inquired into, and a table to regulate the collection in all time coming should now be prepared at the sight of the Court. 5. The defenders are not entitled, under the head of merchandise, to levy duty upon articles which have not been subject to duty by immemorial usage; and the term merchandise applies only to articles passing the bridge of Dumfries for the purposes of commerce or mercantile dealing, and not to articles passing the bridge for use or consumption by the owner, or by the person conveying the same. 6. Generally the pursuers are entitled to decree of reduction and declarator, and to have a table of dues prepared, and interdict granted, all as concluded for.

The pleas for the defenders were—1. The defenders, as representing the burgh of Dumfries, are, in virtue of the charters, the Act of 1681, and immemorial usage, entitled to exact and levy the customs and duties in question. 2. The defenders and their predecessors in office, as representing the burgh, having for more than forty years and from time immemorial been in the uninterrupted use, possession, and enjoyment of the duties and customs in question, their right thereto cannot now be challenged. 3. The defenders' right is sufficiently instructed by the charters and by the statute of 1681, and cannot be objected to, no inconsistent or subsequent charter or act being founded on derogating therefrom. 4. The extent or rates according to which the said duties have been levied having been fixed by immemorial usage, the defenders' right is unchallengeable. In particular, the table of 1772 having been acted upon and enforced from that date down to the present time, it forms the rule according to which the duties fall to be levied. 5. The said table, embracing all merchandise and the duties specified, having been uniformly levied from time immemorial on goods of every description except lime, there is no ground for any exemption in favour of anything but lime. 6. There are no sufficient grounds on which the conclusions of reduction can be supported; and the whole material statements of the pursuers being incorrect in point of fact, the action is unfounded. 7. The table of 1854 being a mere explanation of the table of 1772 cannot be objected to, the table of 1772 forming the rule of payment. 8. The whole statements and pleas of the pursuers being groundless, the defenders are entitled to absolvitor, with expenses.

The Lord Ordinary (Kinloch) allowed the parties a proof, and evidence having been led at considerable length on commission, he pronounced the following interlocutor:—

Edinburgh, 30th June 1865.—The Lord Ordinary having heard parties' procurators, and made avizandum, and considered the process, proof, and pro-

ductions: Finds that the defenders, the Provost, Magistrates, and Town Council of the royal burgh of Dumfries, are not entitled to exact, in name of Bridge Custom, any other or higher duties than are contained in the table bearing date in 1772, and authorised by Act of Council dated 5th November 1772, and are not entitled to exact such of the duties contained in the said table as may, for forty years and upwards prior to the date of the present action, have ceased to be levied on articles carried over the river Nith by the bridge in question: Finds that the table bearing date in 1854, and said to be authorised by Act of Council 16th October 1854, in so far as the said table differs from that of 1772, forms no legal ground or warrant for the exaction of bridge custom: Finds that the defenders are entitled to exact the bridge customs set forth in the first, sixth, seventh, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, and eighteenth, heads of the said table of 1772, according to the true intent and meaning of the same, and to a just conversion of the rates therein specified into sterling money: Finds that, subject to the exceptions after mentioned, the term "merchandise," as employed in the eleventh head of the said table, comprehends all articles which are the subject of mercantile dealing, and are in use to be loaded either on a horse or cart, but does not comprehend live animals, or the carcases of such as are dead, or any of the articles specified in the other heads of the table, which articles are to be charged agreeably to the rates set forth in these other heads: Further, finds that the said term does not comprehend lime, coal, manure, either natural or artificial, trees, or wood, drain-tiles, stones, slates, hay, straw, agricultural implements, furniture, or machinery; Finds that foals, calves, and lambs following their mothers are not chargeable: Finds that swine are not chargeable, dead or alive: Finds that no charge can be laid on carriers, other than those charges applicable to the different specific articles chargeable under the table: Finds that herrings are chargeable under the head of fish, and clogs under the head of shoes: Finds that horses are not chargeable when saddled or in harness: Finds that the defenders are not entitled to exact double rates on any particular day of the year more than on any other: And appoints the cause to be enrolled in order that steps may be taken for having a table of bridge customs framed in conformity with the previous findings.

(Signed) W. PENNY.

Note.—The Lord Ordinary accedes to and adopts the principle that no customs are chargeable except what have been sanctioned by immemorial usage. But it is an item of proof of such usage if the customs shall be found specified in various successive tables of rates promulgated and acted on.

The Lord Ordinary conceives that the Magistrates are not entitled to go beyond their own table of 1772. This was their authorised rule of charge from 1772 downwards. They cannot in the face of their own table set up higher rates; if higher rates were at any time charged by the tacksman, the charge was without warrant, and illegal. The table of 1854, which is too recent to be sanctioned by usage, cannot be sustained, so far as it may be different from and higher than that of 1772. So far as it contains a mere conversion of the rates into specified sums of sterling money, the proof does not sufficiently support its accuracy to warrant its being at once taken. A table of rates containing such conversion must be framed with the aid of some skilled person. There will be difficulties found in its construction, but it is believed that these are by no means insuperable.

Generally speaking the Lord Ordinary is of opinion that the Magistrates are entitled to exact the customs specified in the table of 1772, in so far as, in regard to any of the articles specified, immunity has not been prescribed by the articles being allowed to pass for forty years and upwards without the exaction of customs. He thinks the evidence establishes a sufficient use of exaction under that table, to maintain the table generally. The complaint, for the most part, has been, that higher rates have been exacted. The Lord Ordinary is of opinion that such higher rates cannot be sustained. But the exaction of higher rates cannot so abrogate the table as to entitle the lieges to pass without paying rates at all.

In regard to the second, third, fourth, fifth, eighth, and ninth heads of the table of 1772, it appears to the Lord Ordinary that the duties specified in these are, in a proper sense, not bridge customs, but market dues, and should be set forward under this latter title. So also appears to be the seventeenth head, which is treated as a market due in the table of 1732. The pursuers declined to discuss these heads of the table; and the right of the Magistrates to levy the dues as market dues is unimpaired by anything which has taken place in the present process.

The disputes which have arisen have made it necessary, to some extent, to interpret the table of 1772; and the Lord Ordinary has endeavoured to do so, to the extent to which such interpretation seems likely to be practically useful. The leading question is, what is to be comprehended under the term "merchandise?" The Lord Ordinary has done his best to construe the word: but it must be carefully noted that the construction in issue is not an abstract construction of the word standing by itself. The question is, what meaning it bears in this particular Table of Customs? This must be, to some extent, determined by the analogy of the things specified in immediate connection with the use of the general word. It must be such like things which must be held pointed at. The usage must also go a great way towards determining what articles shall be included, and what omitted. The Lord Ordinary conceives himself to be fairly entitled to hold excepted those articles which the defenders, in the proposed Table of Customs given in by them into process, state to be excluded from the term "merchandise;" but he thinks the list susceptible of addition.

The fourteenth, fifteenth, sixteenth, and eighteenth heads of the table of 1772 are substantially comprehended in the prior table of 1732, and the Lord Ordinary does not think that there is sufficient evidence to warrant their abrogation. The prior table, indeed, mentions shoes, and not clogs. But the Lord Ordinary considers clogs to come under the duty on shoes. He is also of opinion that herrings are fish.

The eighteenth article of the table he considers explanatory of the eleventh, and simply to reduce the duty in a certain event.

The Lord Ordinary cannot sanction the proposed double charge on fair days, although set forth in the table, and having some evidence of usage to support it. He thinks it was not legal to exact a higher bridge custom on one day than another. Whatever may be said as to the market dues exigible on these occasions, there was no reason or propriety in charging more than usual for passing the bridge. He thinks the Magistrates had no right to set forth such double charge in their

table, and that the illegal exaction cannot support itself. (Intd.) W. P.

Both parties reclaimed. In the course of the argument the following cases were cited by the pursuers, viz.—Magistrates of Linlithgow *v.* E. and G. Railway Company, 12th June 1859, 21 D. 1215; Town of Lauder *v.* Brown, 1754, 5 Br. Supp. 819; Burgh of Linlithgow, 1621, M. 10,866; Oliphant *v.* Magistrates of Ayr, 1775, M. 1971; Aboyne *v.* Magistrates of Edinburgh, 1775, M. 1972; Boog *v.* Magistrates of Burntisland, 1775, M. 1991; Tod *v.* Magistrates of St Andrews, 1781, M. 1997; Wauchope *v.* Magistrates of Canongate, 1800, M. App. *voce* "Community" No. 1; Rait *v.* Magistrates of Aberdeen, M. App. *voce* "Jurisdiction," No. 13; Cowan *v.* Magistrates of Edinburgh, February 22, 1828, 6 S. 586; Magistrates of Dunbar *v.* Kelly, November 26, 1829, 8 S. 128; Christie *v.* Landale, May 16, 1828, 6 S. 813. The defenders referred to Ferguson *v.* Magistrates of Glasgow, 1786, M. 1999, and Hailes' Decisions, 922; and Edinburgh Paving Board *v.* Croall, February 28, 1860, 22 D. 913.

At advising—

The LORD PRESIDENT said—This is an action, the object of which, stated generally, is to ascertain the limits of the right of the Magistrates of Dumfries to levy dues for the use of the bridge across the river Nith at Dumfries. The action is brought at the instance of parties interested in the matter against the Provost and Magistrates of that town. The conclusions of the action are for reduction of certain tables of dues issued by the Magistrates, and Acts of Council thereanent. The title of the Magistrates to collect dues is not a matter of question. The question is as to the extent and limits of the right. The right has been exercised by them for a great length of time. In 1772 they issued a table of dues, and made a relative Act of Council; and in 1854, they thought it right to frame a new table. The pursuers contend that the Magistrates exceeded their powers in both tables. The Magistrates contend they are entitled to levy the dues which they have been in use to levy. Their right, however, does not depend upon any table they may have issued. The extent to which they had right to levy may be measured by the extent to which the power has been exercised from time immemorial; and the tables may be in this respect the best interpreters of the original right. The conclusions of the summons are for reduction of their tables, &c., and to have it found that the defenders have no right to levy dues, &c., except from and in respect of such articles, &c., and at such rates as shall appear to have been charged according to the immemorial usage hitherto subsisting. I am not aware that the general principle in that conclusion is matter of question between the parties. But the parties are at issue in reference to certain articles now proposed to be taxed, which were not in the earlier table. The Lord Ordinary allowed a proof of the usage, and a full proof was taken; and the Lord Ordinary, taking the table of 1772 as the basis of ascertaining the limits of the original right, has found that the Magistrates are not entitled to exact any other or higher duties than were contained in that table, and are not entitled to exact such of the duties contained in that table as may have ceased to be levied for forty years prior to the date of this action. Then his Lordship finds that the table of 1854 forms no warrant for the exaction of dues, in so far as it differs from the earlier table. The Lord President then referred to the other findings of the Lord Ordinary, and said —Most of the argument which we heard was raised upon the meaning of the word "merchandise." This word does not occur in the original titles, but in the table of 1772. We must look into the usage to see what was comprehended under this title. The Lord Ordinary has found that it does comprehend some things, but does not comprehend others. I have no observations to make upon the Lord Ordinary's interlocutor upon this point. It was not maintained that it extended to articles introduced for private consumption. I can find no ground for disturbing the Lord Ordinary's interlocutor, and the Lord Ordinary has taken the correct course in reference to the future course of the cause.

LORD CURRIEHILL said—Parties are agreed that a table should be framed to suit existing circumstances. The only question between them has regard to the principles upon which that table should be made out. The first point to consider is the title of the Magistrates to levy dues. It is a singular title by feudal conveyance from private possessors, and not one connected with the common purposes or good of the burgh. There is no doubt that under that title they have a right to levy dues. But the right is of the character of a tax, and therefore must be regulated by the law applicable to the levying of taxes. An important legal and constitutional principle is, that a tax cannot be levied without the authority of Parliament, or immemorial usage. A characteristic of a right of that kind is, that it cannot be extended beyond the articles and rates established by immemorial usage. It is different when usage comes to be used to interpret the wording of a right. In taxes such as we have here, usage is itself the title, and it cannot be extended. That principle has been applied in several cases. We come next to examine the proper authority of the tables issued by the Magistrates. They are no part of the title. They are of great importance on the matter of usage, but of none on that of title. There is no specification in the titles of articles or rates to be levied. These are to conform to immemorial usage. The word "merchandise" has given rise to much of the argument addressed to us. It is not to be found in any of the titles, only in the tables. Therefore its meaning must be regulated by the proof of the usage which followed its introduction. These being the principles which must guide us in the consideration of this case, the question comes to be whether the Lord Ordinary has given effect to them. I think he has, and I concur with him in his views as to the result of the proof.

LORD DEAS said—I am very much of the opinion expressed by the Lord President. The title of the Magistrates is founded on two old charters in favour of certain persons in whose right they now are In 1621 they obtained a Crown charter, which was confirmed by Act of Parliament in 1781. Both of the old charters empower the dues to be levied according to use and wont. It is only the accustomed dues that are to be exacted. It is the same in the Crown charter and Act of Parliament. There is no mention of specific dues, and therefore there could be no question as to the effect of disuse in exacting. I do not intend to express an opinion to the effect that if there had been a specification of articles it would have been sufficient to have prevented exaction if the usage had been to a contrary effect. Taxes exigible by corporations or individuals are to be strictly dealt with, and the right to exact them may be lost by non-exaction for a period of the long prescription. This law is certainly applicable to such taxes as we have

here—which are not burgh customs. Now, with regard to the tables issued by the magistrates, they are not titles. They are merely aids to the tacksman and for the information of the public. They may be used against the parties entitled to make the exaction. The Lord Ordinary has held that the old table may be so used here. When the Magistrates have issued a table and taxed under it for more than forty years, they cannot go back and re-impose dues levied prior to its institution. Dues levied prior to 1772, but dropped out, cannot be inserted in the table of 1854. The main question argued to us was the meaning of the word "merchandise." Parties being agreed that the word is only to be extended to articles brought in for sale and not for private consumption, I think the Lord Ordinary's interlocutor is correct upon this as upon the other points of the case.

Lord ARDMILLAN concurred. His Lordship said—I agree with Lord Curriehill that an important peculiarity in this case is that it does not concern burgh customs properly so called. There is therefore an absence of the elements of common interest and common good. This is the case of the Magistrates having acquired from private parties a right to levy a tax. It is legally distinguishable from the right to levy proper burgh dues. The table of 1772 was clearly not the title of the Magistrates. That table is, however, a document of very great importance. It is the foundation of the whole proof of actual exaction, and actual exaction upon that proclaimed table is usage. The right was avowed. That table has been, I think, quite correctly treated as a limit to the rights of the Magistrates as to subjects and rates. The Magistrates appear to have so regarded it themselves in 1772 and 1854. (His Lordship here quoted from the minutes of Council, and then proceeded)—It is obvious from these passages that the Magistrates themselves looked upon that table as the limit of their right to exact dues. It is also clear that when during forty years articles have been passing across this bridge without the exaction of dues upon them, that is a contrary usage sufficient to detract from the authority of the table. Upon the question as to the meaning of "merchandise" which occurs only in the table, this is a word explainable by usage. I agree with the construction put upon it by the Lord Ordinary.

The Court therefore adhered to the Lord Ordinary's interlocutor, and found the pursuers entitled to expenses, subject to modification.

Counsel for Pursuers—The Solicitor-General and Mr Marshall. Agents—Messrs Scott, Bruce, & Glover, W.S.

Counsel for Defenders—Mr Patton and Mr Cook. Agent—Mr William Kennedy, W.S.

SECOND DIVISION.

ANDERSON *v.* M'CALL AND CO.

(*Ante* vol. i., p. 250).

Sale—Delivery—Usage of Trade. Held that the property of a quantity of grain stored in a warehouse kept by a firm who stored in it their own grain and also that of others for hire, was not passed by a delivery-order addressed to the storekeeper and an entry in the books of the store that it belonged to the alleged transferee.

The pursuer in this action is William Anderson, accountant in Glasgow, trustee on the sequestrated estate of Andrew Jackson & Son, grain merchants in Glasgow, and James Jackson & George Jackson, grain merchants there, the individual partners of that firm; and the defenders are John M'Call & Company, corn factors, Glasgow, and Thomas M'Call, George M'Call, James M'Call, and George Low, corn factors there, the only known individual partners of that firm.

The case was tried on the 27th March 1866, before the Lord Justice-Clerk and a jury, upon the following issues:—

"It being admitted that on 23d May 1864 the estates of Andrew Jackson & Son, grain merchants in Glasgow, were sequestrated under the Bankruptcy Act, and that the pursuer William Anderson is trustee upon said estates,

"Whether, after the first deliverance in the sequestration, the defenders removed from the stores, situated at 69 James Watt Street, Glasgow, and took possession of the quantities of wheat specified in the schedule hereunto annexed, or any part thereof, belonging to the sequestrated estate of Andrew Jackson & Son; and are resting-owing to the pursuer, as trustee foresaid, the sums specified in said schedule, or any part thereof, as the price or value of said quantities of wheat, with interest thereon at the rate of 5 per cent. per annum from the respective dates mentioned in schedule?"

Schedule.

1. The price or value of 1386 bolls of red French wheat, *ex* "Agriculteur," £1371, 5s. 3d., with interest at 5 per cent. per annum from 25th September 1864.

2. The price or value of 1490¼ bolls of wheat, *ex* "Ludovic," £1407, 7s. 3d., with interest at 5 per cent. per annum from 13th October 1864.

3. The price or value of 1324 bolls of wheat, *ex* "Amazon," and 1260 bolls of wheat, *ex* "Romp," £2512, 2s. 11d., with interest at 5 per cent. per annum from 13th October 1864.

4. The price or value of 1729½ bolls of wheat, *ex* "Bonne Mere," £1717, 16s. 10d., with interest at 5 per cent. per annum from 13th October 1864.

Or,

"Whether, prior to the first deliverance in the sequestration, the defenders had obtained delivery of the said grain as proprietors thereof?"

On the direction of the Court the jury returned a special verdict in the following terms:—Find that the bankrupts Andrew Jackson & Son were from and after the month of November 1860, down to the date of their sequestration, the owners of certain stores in James Watt Street, Glasgow, and that Robert Angus was the foreman storekeeper who acted for them in the management of the said stores, and was paid for his services as such by weekly wages received from the said bankrupts: Find that the said stores were used by the said bankrupts partly for storing grain belonging to themselves, or consigned to them, and of which they had the possession, control, and disposal, and partly for storing the grain of other persons, for which they charged such persons warehouse rent at certain fixed rates: Find that in the storekeeper's books kept at the store, and also in the store rent-book, kept by the bankrupts at their counting-house in Oswald Street, they were charged with warehouse rent, and all other charges for the grain stored by them in the said stores, in the same way and at the same rate as other persons storing grain therein: Find that in their business-books the bakrupts kept the whole accounts of their business as storekeepers separate from the