

and falsely represent him, then they would find for the defender.

The jury then retired, and, after an absence of a few minutes, returned a unanimous verdict for the defender.

Agent for Pursuer—John Thomson, S.S.C.

Agents for Defender—D. Crawford and J. Y. Guthrie, S.S.C.

Friday, April 3

(Before the Lord President.)

WHITE v. GRIEVE.

(Ante, vol. iv, p. 156).

Jury Trial—Bankruptcy—Fraud—Bill of Lading. Verdict for pursuer.

In this case the pursuer was Peter White, accountant in Glasgow, trustee on the sequestrated estates of John Reid junior & Company, merchants in Glasgow, and of John Reid junior and David Walker, both merchants there, the individual partners of said company, as such partners, and as individuals, in room and place of the deceased Andrew MacEwan, accountant in Glasgow, formerly trustee on the sequestrated estates; and the defender was Walter Grieve, merchant in Greenock. The issue submitted to the jury was in the following terms:—

“It being admitted that, on the 30th December 1864, the estates of John Reid junior & Company, merchants in Glasgow, were sequestrated, and that the pursuer is trustee on said estates:

“Whether on or about the 13th December 1864, and within sixty days of said sequestration, the said John Reid jun. & Company, in violation of the Statute 1696, c. 5, wrongfully transferred a bill of lading of a cargo of sugar, consisting of 1503 bags or thereby channel brown sugar, and 1700 bags or thereby American brown sugar, and the said cargo, to the defender, in satisfaction of a prior debt due to him, in preference to their other creditors? And, whether the defender is indebted and resting-owing to the pursuer in the sum of £4114, 6s. 8d., or any part thereof, as the value of the said sugars, with interest thereon from 13th December 1864?”

SOLICITOR-GENERAL (MILLAR) and A. MONCRIEFF for pursuer.

CLARK and GIFFORD for defender.

The jury, after a short absence, returned a unanimous verdict, finding for the pursuer, and assessing damages at £3496, 18s. 8d.

Agents for Pursuer—Wilson, Burn & Gloag, W.S.  
Agents for Defender—M'Ewen & Carment, W.S.

Saturday—Monday, April 4–6.

(Before the Lord President.)

TURNBULL, SALVESEN & CO. v. SHOTTS IRON CO.

Jury Trial—Agreement—Failure to Perform. Verdict for pursuers.

This was an action in which Turnbull, Salvesen, & Co., merchants, Leith, and George Vair Turnbull and Christian Salvesen, merchants, Leith, the individual partners of said firm, were pursuers; and the Shotts Iron Co., carrying on business at the

Shotts Iron Works, in the country of Lanark, and at 69 West Nile Street, Glasgow; and William Crichton, of 17 India Street, Glasgow; Clement Ellis, merchant, Glasgow; and George Stewart Anderson, merchant there, three of the individual partners, and also three and a quorum of the directors of the said Shotts Iron Company, were defenders.

The issue sent to the jury was in the following terms:—

“Whether, under the letters contained in the schedule hereto annexed, the defenders contracted and agreed to deliver to the pursuers in the year 1866, 3000 tons of Shotts Boghead gas coal, in the manner and upon the terms and conditions specified in the said letters? And

“Whether, in breach of said contract, the defenders failed to deliver to the pursuers, in the manner therein specified, 1000 tons, or any part thereof, of the said coals—to the loss, injury, and damage of the pursuers?”

Damages were laid at £1500, with interest from 1st May 1866, till payment.

SCHEDULE referred to in the foregoing issue.

I.—Letter, the Pursuers to Mr Richard Brown, Manager of the Shotts Iron Company.

“Leith, 25th July 1865.

“Dear Sir,—We now beg to confirm the verbal arrangement made with you on Saturday. The arrangements of the 10th inst. with reference to the sale of 2000 tons is hereby cancelled. You are now to supply us with 3000 tons Shotts Boghead gas coal during 1866, and a like quantity of 3000 tons during 1867. Delivery to be given and taken at the rate of 250 tons per month, and if not so taken, we are to have liberty to do so during the following month, but thereafter to be paid whether taken or not. The price is fixed at the rate of 42s. 6d. per ton net, f. o. b. Bo'ness, with 8d. per ton extra if shipped at Leith. In the event of the coal becoming exhausted, you are not to be called on to give delivery, but our purchase is to rank equally with others, and according to date. In the event of a strike among the workmen, the delivery may be delayed until it is over, and the additional time added to end of contract.—We are, &c.

(Signed) “TURNBULL, SALVESEN, & Co.

“P.S.—Will be glad to hear from you in reference to the remaining 5000 tons.”

2.—Letter, Mr Richard Brown to the Pursuers.

“Glasgow, 27th July 1865.

“Dear Sirs,—I have yours of 24th inst., and have entered the contract for the 6000 tons gas coals, on the terms and conditions named, with the addition, as formerly agreed on, that they are to be paid for prompt cash against delivery. I have also arranged, and hereby agree, to give you the monthly balance of our output (if any) during the currency of 1866 and 1867, at 43s. 6d. per ton net, at Bo'ness, cash against delivery—the above contract, and others made prior to date, being first deducted from the output. Please confirm this, and oblige, yours, &c.

(Signed) “RICHARD BROWN.”

3.—Letter, the Pursuers to Mr Richard Brown.

“Leith, July 28, 1865.

“Dear Sir,—We are favoured with yours of yesterday, and, noting contents, we have pleasure in confirming the same. We are now desirous to know if you have any coal for delivery this year, and if you can book us for a quantity at 42s. 6d.

We will also feel obliged by your saying what you consider will be the total output in 1866 and 1867, and the probable quantity at our disposal; this, of course, without prejudice to yourself.—We are, &c.  
(Signed) "TURNBULL, SALVESEN, & Co."

The statement of the pursuers was to the effect, that up to the 1st of May 1866 the defenders had failed to deliver the 250 tons of coal each month, as promised, and that, through non-delivery, a contract which the pursuers had entered into with Messrs James Millar, Son, & Co., merchants, Glasgow, at the rate of 72s. 6d. a ton, had not been implemented to the extent of 1000 tons. Even if they had not entered into that contract, the pursuers averred that they would have been able to realise a profit of £1500 at least on the coal which they were entitled to receive in terms of their contract with the defenders. The defenders maintained that delivery was to be given to the pursuers at the rate of 250 tons per month, under a limitation for the purpose of protecting the defenders against the effects of strikes, and of blanks or wants, and they averred that from that reason they were unable to supply the coal.

CLARK and A. MONCRIEFF for pursuers.

FRASER and SCOTT for defenders.

The jury unanimously returned a verdict for the pursuers, assessing the damages at £900. There was reserved to the defenders the right to move the Court on the question whether the pursuers were entitled to their claim of damages for the non-delivery of the thousand tons of coal during the first four months of 1866, in respect of their thereafter having taken delivery of the stipulated amount of coal—250 tons per month—in terms of the contract during the remaining eight months of the year.

Agents for Pursuers—Hill, Reid, & Drummond, W.S.

Agent for Defenders—Arch. Melville, W.S.

*Saturday—Wednesday, April 4-8.*

(Before Lord Ormidale.)

LONDON STEAM COLLIER AND COAL CO. v.

WINGATE & CO.

*Jury Trial—Agreement—Failure to perform.* Verdict for pursuers.

In this case the London Steam Collier and Coal Company (Limited), incorporated under the Companies Act 1862, and William Miller, S.S.C., their mandatory, were pursuers, and Thomas Wingate & Co., shipbuilders near Glasgow, were defenders. The action arose in this way. Upon the 3d January 1866, the defenders offered to build two steam colliers for the pursuers for £20,000. The pursuers said that the builders guaranteed that each vessel should be capable of carrying 700 tons of cargo, in addition to all requisite stores, including 25 tons of bunker coal, on a draught of water not exceeding 13 feet, and, when so loaded, the vessel to make under steam eight and a half knots per hour. On the delivery of the vessels, according to the allegation of the pursuers, it was found that one of the vessels—the *Ludworth*—was deficient to the extent of 36 tons, and the other, the *Thornley*, to the extent of 21 tons, giving 45 cubic feet per ton. The pursuers also maintained that the two vessels were not able to carry their holds full of coal at 45 feet per ton without trimming so much by the head as

not to be seaworthy; that in this respect there was a deficiency of 65 tons; and that the business operations of the pursuers had been seriously disturbed by the deficiency in the carrying capacity of the vessels. The defenders maintained that, by the specifications adjusted with the pursuers, and in terms of which the contract was completed by the offer and acceptance libelled on, the exact length, breadth, and depth of the vessels, and also their tonnage measurement, were definitely fixed and determined; that an exact model of the vessels, drawn to a precise scale, was also prepared and approved of. According to the specification forming the basis of the contract libelled on by the pursuers, the two vessels in question were specified to be 170 feet length on keel, 26 feet beam, and 15 feet depth moulded, and to be of the tonnage of 555½<sup>1</sup>/<sub>4</sub> tons, old builders' measurement; and it was alleged by the defenders that the vessels were constructed of the measurements, tonnage, and capacity required by the contract; that they were in all other respects conform to the provisions of said contract; and that both vessels had been delivered to and retained by the pursuers for the purposes of their trade.

The following issue was sent to the jury:—

"Whether, in or about the month of January 1866, the defenders contracted with the pursuers to furnish them with two steam-vessels in accordance with the stipulations and terms set forth in the specification No. 16 of process. Whether the defenders afterwards delivered to the pursuers two steam-vessels, for which the pursuers paid the stipulated price. And whether the said steam-vessels were not, or either of them was not, in accordance with the stipulations and terms set forth in the said specification, inasmuch as the same were or was deficient in carrying capacity, to the loss, injury, and damage of the pursuers."

Damages laid at £10,000.

YOUNG, GIFFORD, and MACLEAN for pursuers.

DEAN OF FACULTY, SHAND, and WATSON, for defenders.

The jury returned a verdict for the pursuers, and assessed the damages at £2000.

Agent for Pursuers—W. Miller, S.S.C.

Agents for Defenders—Campbell & Smith, S.S.C.

*Tuesday—Wednesday, April 7-8.*

(Before Lord President.)

PETERSEN AND MANDATORY v. M'LEAN & HOPE AND HERTZ.

(*Ante*, p. 172.)

*Jury-Trial—Ship—Arrestment—Reparation.* Action for wrongous seizure and injury of vessel. Verdict for pursuers.

In this case, Mr Niels Christian Petersen, master and part owner of the vessel *Nayaden* of Flensburg, in Prussia, presently lying in the harbour of Inverkeithing, for himself, and also as representing the other owners of the said vessel, was pursuer; and Messrs M'Lean & Hope, merchants, Leith, and Mr Theodor Hertz, merchant, Glasgow, were defenders.

The following were the issues sent to the jury:—

"It being admitted that, on or about 16th May 1867, the defenders, M'Lean & Hope, with consent and concurrence of the other defender, Theodor