£50,000 for the quays in the harbour, which is excessive.

3. If the revenue of the river is adopted as the test for ascertaining the annual value of the quays in the harbour, only the revenue earned within the parish of Govan should be taken into account. But even if the whole revenue earned within the high stage should be taken, the amount is £66,666; and from this should be deducted, according to the assessor's own principle, one-half as the revenue of the waterway, the remainder—viz., £33,334—being considered as the gross valuation of the quays and wharves in the harbour, subject to deduction of expenses, and amounting to about £9172; and to a further deduction of 20 per cent. for tenants' profits, leaving a sum of about £19,801 to represent the total valuation of the quays. The total length of the quays being 4359 yards, that of Mavisbank Quay being 54 yards, £2480 would be the proportion payable as its annual value.

4. If this mode of valuation be not adopted, the appellants are willing to concur in a rent at the same rate per mile for the third stage, as is admitted to have been fixed by the Legislature for the second stage. That stage is but 3⅛ miles in length, and yet by statute as large a proportion of the dues is leviable in it as in the lower stage of ten miles. The reason is obvious. The further up the more costly has the river been to deepen and improve. Then if one-sixth of the dues has been appropriated to the middle stage of 3⅛ miles as the river rent, a still higher proportion requires to be apportioned as the rent of the upper stage, which is 5⅜ miles, and has cost ten times more to deepen and improve than the middle stage. The appellants, however, offer to take it in this way—If 3⅛ miles give £16,666 for river rent, 5⅜ miles will give £28,666; and this sum deducted from £66,666, the gross revenue in the first stage, leaves £38,000, instead of £50,000, as brought out by the assessor, which is £4667, more than the half of the gross revenue in the first stage.

5. Further, in determining what is a proper deductional allowance for the waterway, the extensive nature of the operations of wideniug, deepening, and improving the river and harbour must be kept in view. These, including the purchase of land thrown into the waterway, have involved an expenditure of considerably upwards of £1,000,000 sterling, while the cost of the works in the harbour liable to assessment has not exceeded one-half of that sum, notwithstanding that many of them have been more than once entirely renewed. A rent for the waterway, based on these proportions, would bring out a result almost similar to that proposed by the appellants.

6. By the assessor's method the extraordinary result is brought out of the trustees being liable to have the same valuation put upon their property in any one of all the parishes through which the river passes; for as the gross valuation has no reference to the extent of quayage, but would apply to 4 yards equally as to 4000, the assessor in any one parish, where a quay or landing-place is situated, however small, would be entitled to value it precisely in the same way as the assessor has done in the present case. Had there been only the Mavisbank Quay in the harbour of Glasgow, the assessor would have concentrated the entire gross rental upon it. The rental could not have been increased, although the river had been lined with quays along its whole length.

7. In the event of the dues on vessels or goods being adopted as a criterion or data for ascertaining the rent of the quays, &c., the appellants claimed that the cost of dredging the harbour and along the quays should be deducted from such rent, as an expense necessarily incurred from day to day to keep a way open to the quays which would, unless continuously dredged, very soon be inaccessible for vessels. This cost should be deducted (1) whether it is to be held as part of the necessary expense of a tenant in keeping clear the way to the subjects let, and the amount of which he would take into consideration in fixing his rent; or (2) whether it is to be held as a charge upon the river and waterway of the harbour, in which case an extra proportion of the dues would fall to be allocated on the river, to compensate the expense of dredging the harbour. This claim should be allowed either by the Valuation Court or by the parochial boards, but both have refused to make the deduction—each deciding that it falls to be dealt with by the other. The cost under this head is upwards of £10,000 per annum.

To these arguments it was stated, for the assessor, in the case prepared for the opinion of their Lordships, that in proceeding to estimate the annual value of such subjects as the quays and wharves belonging to the Clyde Trustees, which are situated in different parishes, he could only, as in the case of a gas or water company, deal with the subjects *in cumulo*, and having ascertained the nett value of the whole, apportion the amount according to the length of quay in each parish. With regard to the objections offered to the mode of valuation followed by him, the assessor contended that the plan of dividing the river into stages appeared to have been adopted with the view of enabling the trustees to levy rates on vessels entering the lower stages of the river, for the purpose of proceeding to the harbours of Dumbarton, Bowling, or Renfrew; that the revenue with which he had dealt was that derived solely from vessels which had entered the harbour, and made use of the quays, &c., belonging to the Clyde Trustees; that he was justified in so doing, as the quays must be looked upon as the producing subject, but inasmuch as the harbour and quays, without the river as a means of access, would be of as little value as would the river even in its present state were there neither harbour nor quays to which vessels could come, and as the trustees themselves do not undertake to separate the dues, and show what amount is paid for the use of the quays, and what for the use of the river and harbour waterway, he considers that in allocating the revenue as applicable in like proportion to each, he has done what is both fair and reasonable, unless the trustees can prove that the sum allocated is insufficient to maintain the river and harbour waterway in their present state.

Their Lordships without deciding either way remitted to the commissioners to make further inquiries.

Tuesday, Feb. 6.

FIRST DIVISION.

SIDEY AND CRAWFORD *v.* MUNRO.

Process—Issue. A pursuer must take an issue in conformity with his averments on record.

Counsel for Pursuers—Mr Clark and Mr Watson. Agent—Mr Lockhart Thomson, S.S.C.

Counsel for Defender—Mr Gifford, Mr Trayner, and Mr Deas. Agents—Messrs Duncan & Dewar, W.S.

This was a question as to the terms of an issue. The pursuers, who carry on business in Montreal, and transact business with merchants in this country through agents appointed by them, averred that on or about 21st July 1864 the defender commissioned them, through their agents in Glasgow, to *purchase* for him and ship to Glasgow a quantity of butter. The pursuers proposed to put in issue, "Whether the defender ordered the pursuers to *procure* for him the butter." The defender objected to this issue, that the order averred was to *purchase and ship*, and that these words must therefore be put in issue. The pursuers' object in using the word *procure* was to meet the case of a purchase made before the order reached Montreal, which they hold would be, according to mercantile usage, fulfilment of the order as averred on record.

The Court held that the defender was right in his contention, and that the words "purchase and ship"

must be substituted in the issue for the word "procure."

The LORD PRESIDENT said—It was a different question whether what was done was according to mercantile procedure. The pursuers must take the risk of that if they go to trial under this issue. We will not at this stage determine the point. The pursuers' statement is that the defender ordered them to purchase, and that is tantamount to an admission.

The other Judges concurred, Lord DEAS observing that it seemed to him that what the pursuers averred, and what they proposed to put in issue, formed two quite different grounds of action.

MACDONALD'S TRUSTEES *v.* MUNRO.

Master and Servant—Accounting—Issues. Issues in an action by a master's trustees against his servant, in which it was alleged that the latter had uplifted money from bank for his master and failed to account for it.

Counsel for Pursuers—Mr Clark and Mr Shand. Agent—Mr J. T. Mowbray, W.S.

Counsel for Defender—Mr Gifford and Mr Deas. Agent—Mr John Robertson, S.S.C.

The pursuers are the trustees and executors of the deceased Captain Ronald Macdonald, who resided in Portobello, and they sued the defender, Archibald Innes Munro, who was the captain's servant for twenty years before his death, for payment of £500, with interest since 28th July 1864, when Captain Macdonald died; and the summons concluded alternatively that "the defender ought and should be decerned and ordained to exhibit and produce before our said Lords a full and particular account of the whole sums of money received by him for or on account of the said Ronald Macdonald, or delivered and entrusted to him by the said Ronald Macdonald between 2d May and 28th July 1864, and of the application of the said sums, whereby the true balance due by him to the said Ronald Macdonald at the time of his death may appear and be ascertained." This was followed by a conclusion for payment of the said balance.

It appeared that Captain Macdonald had by his settlement, executed in April 1864, left to the defender his wearing apparel and a legacy of £100; and after looking into the deceased's affairs his trustees found that there had been drawn from his account at the Royal Bank in Portobello, betwixt 2d May 1864 and 8th July 1864, four sums amounting to £600. It was averred by the pursuers that these sums had all been drawn by the defender, and that the deceased had no occasion for so much money for his own use, because he was bedridden from April until his death in July; at all events, that at the utmost he did not require for his own uses more than £150. It was also averred (Cond. 8), "Of the said sums the defender retained and still retains £450 or thereby, and the said sums so retained belonged to the said Ronald Macdonald, and now belong to the pursuers." And also (Cond. 14), "The defender intromitted with the said sums drawn as aforesaid. He made certain small payments out of these sums, but he never accounted for these sums to the deceased. If he handed the monies drawn from bank by any of said cheques to the deceased, he afterwards obtained possession of these monies to be held for behoof of the deceased, and he now retains possession thereof." The defence to the action is that although the defender was occasionally sent to the bank for money, he always instantly handed over the same to his master to be disposed of at his pleasure. There was no averment or plea that the money or any part of it had been gifted to the defender by the deceased; but before adjusting issues to-day, the pursuers minuted that they consented to the question of donation, if raised at the trial, being tried under the issues.

The pursuers proposed an issue putting the simple question whether the defender uplifted the four different sums, and is resting-owing to the pursuers the sum of £450, part thereof, with interest. They founded upon the cases of Mackenzie *v.* Brodie, 19th March 1859 (21 D. 804), and Byres *v.* Forbes, 5th December 1865, in which cases issues had been adjusted in similar terms.

The Court thought the case was a very peculiar one, and should be tried under two issues, which were adjusted in the following terms:—

"I. It being admitted that at the dates aftermentioned the defender was a servant in the employment of the said deceased Ronald Macdonald—Whether, of the dates after-mentioned, the defender, by virtue of cheques granted by the said deceased Ronald Macdonald on his account with the Royal Bank of Scotland, uplifted from the branch of that bank at Portobello the following sums—viz.,

On or about 2d May 1864.....	£150
On or about 12th May 1864.....	200
On or about 2d July 1864.....	50
On or about 8th July 1864.....	200
	£600

And whether the defender failed to account for, and is resting-owing to the pursuers, the sum of £450, part of the said sums, with interest since 28th July 1865, or any part thereof?

"II. It being admitted that during the period aftermentioned the defender was a servant in the employment of the said deceased Ronald Macdonald—Whether, during the period between 1st May and 28th July 1864, the defender obtained from the said deceased Ronald Macdonald part of the sums drawn under the said cheques, and amounting to £450, or any part thereof, for behoof of the said deceased, and whether the defender retains and is resting-owing to the pursuers the said sum of £450, or any part thereof, with interest since 28th July 1864?"

SECOND DIVISION.

DUKE OF BUCCLEUCH AND OTHERS *v.* COWAN AND OTHERS.

Process—Conjunction. Circumstances in which three processes having reference to the same matter, but in which the pursuers and defenders were not the same, were conjoined.

Counsel for the Pursuers—Mr Patton, Mr Shand, and Mr Johnstone. Agents—Messrs J. & H. G. Gibson, W.S.

Counsel for the Defenders—The Lord Advocate, the Solicitor-General, Mr Gordon, Mr Clark, Mr Gifford, and Mr A. Moncrieff. Agents—Messrs White-Millar & Robson, S.S.C.

This is an action at the instance of the Duke of Buccleuch, Lord Melville, and Sir William Drummond, proprietors of land on the banks of the river North Esk, and is directed against Alexander Cowan & Sons, William Somerville & Sons, and Alexander Annandale & Sons, papermakers, all of whom have mills on the banks of the river. The action concludes that the defenders should be prohibited and interdicted from discharging into the Esk from their respective paperworks any impure stuff or matter of any kind, whereby the water of the Esk, in its progress through the property of the pursuers, may be polluted or rendered unfit for domestic use, or for the use of cattle, or its amenity in angling diminished. There is an alternative conclusion that in the event of the defenders being found entitled to use the stream, they must filter the water after they have used it at their works in such a manner as to return it to the stream in as pure a state as possible. The defenders deny the pollution, and among other pleas maintain the acquiescence of the pursuers and their predecessors in the use made of the river by the defenders and former occupiers of the mills. They further say that the river North Esk having for time immemorial received the drainage and sewage of the adjacent towns and villages, and of the district gene-