Friday, 11th December 1868.

LINDSAY AND LONG *v.* ROBERTSON AND OTHERS.

(*Ante*, vol. iv, p. 91; vol. v, p. 555.)

Verdict—Mussel-Fishings—General Title—Prescriptive Possession—Barony. Motion for a new trial to set aside the verdict of a Jury, finding that the pursuers had established a right to mussel-fishings under a general title, by proof of prescriptive possession, on the ground that the verdict was contrary to evidence, *refused.*

This case, which relates to the right to the mussel scalps on the north bank of the river Eden, was tried before Lord Barcaple and a jury during the last summer session. These scalps were claimed by the pursuers, Sir Coutts Lindsay and Colonel Long, on the ground that they had had the exclusive possession of them during the prescriptive period which set up their general title. The fishermen of St Andrews, on the other hand, maintained that they had effectually interrupted the alleged possession. The jury found for the pursuers.

The defenders moved for a new trial, on the ground that the verdict was contrary to evidence, and obtained a rule.

YOUNG, Q.C. (with him WATSON and BALFOUR), in showing cause argued that, assuming the possession of the defenders to have been the most favourable,—that it had been continuous, open, and persistent, it could be of no avail to them, for it was possession which could not be referred to a title. It had been decided by the judgment of the Court in the case of *The Duchess of Sutherland* v. *Watson and Others*, that the right of mussel-fishing was patrimonial property; the defenders, therefore, who appeared in the action as members of the public could have no title. That being so, the alleged possession of the defenders was illegal,—an act of trespass. They were nothing but thieves, and therefore any amount of such possession that they might set up would never avail to interrupt the possession of the pursuers.

D.-F. MONCREIFF (with him A. MONCRIEFF and W. A. BROWN) in support of the rule.

The pursuers, in showing cause, had not read a word of the evidence, and yet it was on the ground that the verdict was contrary to evidence that the defenders had obtained a rule. There was a strong body of evidence to show that the defenders had during the prescriptive period been in the habit of going over to the north side of the river Eden, and taking mussels wherever they chose—both for domestic purposes and as bait for fishing. Such possession was amply available to interrupt the alleged possession of the pursuers. True, the defenders appeared as members of the public, and it had been decided that the right to mussel-fishing was not in the trusteeship of the Crown. But it was absurd to say that therefore their possession was that of trespassers. The title was in the Crown, and the possession of the defenders was tolerated possession for the Crown. Under this condition of the argument, the possession of the pursuers was trespass just as much, because, until proof by prescriptive possession, which was the question in issue, their title was no better than that of the defenders.

Lord BARCAPLE delivered the leading opinion, reviewing and repeating the law he had laid down in his charge to the jury. There was no foundation whatever for the pursuers' argument—that the possession of the defenders was that of trespassers. So long as the Crown, in whom the radical right was, did not interfere, their possession was perfectly legal; and if proved for the requisite period, and to be of the requisite nature, was available to compete with and to destroy the counter-possession of the pursuers. He should be sorry to assent to the doctrine that the public, by merely walking on the fore-shore, were amenable as for a trespass; for the pursuers' argument really amounted to that. These views had been fully and anxiously explained to the jury. After that, the question was a balancing of evidence. If the jury had returned a verdict in favour of the defenders, he was not prepared to say that he would have agreed to disturb it; and the same considerations led him to suggest that the verdict which had been pronounced should not be interfered with. The question was peculiarly one for the jury, and it could not be said that their verdict was one for which there was no support in the evidence.

The other Judges concurred, the LORD JUSTICE-CLERK observing, that this case had signally testified to the wisdom of the provision in the New Court of Session Act, requiring the Judge who presided at the trial to be a member of the Court when hearing a motion for a new trial.

Agents for Pursuers—Dundas & Wilson, C.S.
Agent for Defenders—A. Beveridge, S.S.C.

Thursday, December 17.

FIRST DIVISION.

MAXWELL AND OTHERS *v.* MAGISTRATES OF DUMFRIES.

(*Ante*, ii. 43.)

Bridge-dues—Customs—Burgh—Usage. Magistrates were in use, in virtue of charters and an Act of the Scottish Parliament, to levy certain customs, the rate of which was not fixed either by the charters or the Act. *Held* that in framing a new table of customs no change could be admitted which was not sanctioned by immemorial usage. Remit to accountant to frame table with reference to proof of usage.

The Magistrates of Dumfries, in virtue of certain ancient charters and an Act of the Scottish Parliament in 1681, claimed and exercised a right of levying custom on goods and bestial crossing the Nith within certain limits. There was not, either in the charters or in the Act, any table of rates, but at different times the magistrates issued tables, three being extant, issued in 1732, 1766, and 1772. In 1854 the magistrates issued a new table, mostly corresponding with that of 1772, but introducing certain new duties, and raising others previously enacted. Certain gentlemen of the stewartry brought a reduction of the table of 1854, and asked declarator that no dues could be levied except such, and at such rates, as were sanctioned by immemorial usage. Lord Kinloch, on 30th June 1865, held that the magistrates were not entitled to exact any other or higher duties than were contained in the table of 1772, and were not entitled to exact such of these duties as might for forty years and upwards prior to the date of the action have ceased to be levied; and pronounced various other special findings with reference to the subjects for which

dues were leviable. The Court adhered. The case went back to the Lord Ordinary, who remitted to an accountant to report on the customs, and frame an amended table giving effect to the findings.

The reporter made an interim report asking instructions for carrying out the remit. The Lord Ordinary of new remitted to the accountant, holding that the previous interlocutor was exhaustive of the table, and that it was the duty of the accountant to give effect to the findings—he not being entitled to control the findings by any reference to the proof, or to insert different rates from those in the table on the ground of alleged usage, which would be overturning both table and interlocutor. Thereafter the Lord Ordinary approved of the amended table of customs suggested by the reporter, and reduced the table of 1854.

The pursuers reclaimed.

Solicitor-General (YOUNG) and JOHN MARSHALL for reclaimers.

COOK for respondents.

At advising—

LORD KINLOCH—From the turn which the discussion of this case has taken before your Lordships, I am desirous, as the Lord Ordinary in the cause, to offer a few explanations before your Lordships advise the case.

When the case came before me in the Outer House I allowed, of consent and before answer, a proof to both parties. When the proof was reported, I heard parties on the whole cause, to such extent as they thought right on either side. I then made avizandum with the process, in order to the disposal of the case.

The principle which was, in my opinion, to rule the case, I stated in the first findings of my interlocutor of 30th June 1865:—"Finds that the defenders, the Provost, Magistrates, and Town Council of the Royal burgh of Dumfries, are not entitled to exact in name of burgh customs any other or higher duties than are contained in the table bearing date in 1772, and authorized 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 erection."

I proceeded thereafter to apply these findings to the case of a great variety of articles, as to which there was a controversy whether, under the name of merchandise or otherwise, they fell now to be charged with bridge custom. Applying the principle enunciated, I found the articles which are set forth in the latter part of the same interlocutor to be exempt from charge.

I had then to consider whether the rates set forth in Scots money in the table of 1772 as chargeable on horses, cows, and other cattle, and on various articles therein mentioned, were sustained by usage. I found the usage extremely conflicting, but came, on the whole, to the conclusion that the table was not sufficiently contradicted, but, on the whole, was confirmed by the usage. As explained in my note to the interlocutor now under review, I "did not proceed upon the ground that the table was in itself of force, but on this other and entirely different ground, that, if maintained for more than forty years as the avowed rule of payment, it was evidence of that usage which forms the ground of a legal exaction. I considered that any higher charges made by the tacksmen must go for nothing, being made without authority. On the other hand, any lesser charges would at the least require a clear and constant usage of more than forty years to entitle them to prevail against the table. Mere variances in the charge by different tacksmen would, as I thought, be of no avail in counteracting the effect of a table given to every tacksman as his rule of charge, notified to the public as such, and generally dealt with as the standing table of rates."

The result was the following finding:—"Finds that the defenders are entitled to exact the customs set forth in the 1st, 6th, (and various other) 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." I certainly did not intend by this finding either to open the way for a new proof, or to invite a renewed argument as to how far the rates in the table had been diminished by use of exaction. On the contrary, I intended to close the discussion by judgment; and to settle that the actual rates charged in the table of 1772 were *simpliciter* to be adopted, subject merely to their conversion into sterling money, and subject also to this qualification, that they were to be taken "according to the true intent and meaning of the same"—an expression which had mainly reference to the measures of capacity set forth in the table, such as "load" and "corded pack," some of which it might require some additional information to define.

The case went to the Inner House by reclaiming note against my interlocutor, and returned to me with the interlocutor *simpliciter* affirmed.

The parties then endeavoured to adjust a table betwixt them; but it seemed to me that, in a matter involving public interests, which could not be transacted by individual litigants, it would be right to have the table settled by some professional man of skill in strict terms of the interlocutor; and hence the remit to Mr Barron, and, on his declinature, to Mr Charles Ogilvy.

When Mr Ogilvy, by an interim report, applied to me for more specific instructions, I informed him what was my view in framing my interlocutor, and stated to him that he was not to be guided by any reference to the proof, but was simply to take the rates as in the table of 1772, and convert them into sterling money, informing himself of "the true nature and meaning" of any doubtful phrase, such as "corded pack." All that has been done by Mr Ogilvy has been done in conformity with these instructions, and the entire responsibility rests with me.

I should regret extremely if any defectiveness of expression on my part should have led to misapprehension, and created any confusion or expense. Some of your Lordships were members of Court when my former interlocutor was under discussion, and will be able to explain the views under which they affirmed the interlocutor. After what I have now said, your Lordships will not be surprised if I cannot put on the interlocutor any other construction than what I have mentioned, or come to any other conclusion than that the interlocutor has been rightly worked out by Mr Ogilvy.

LORD DEAS—The law applicable to a case of this kind, apart from anything that may have been fixed by interlocutor, is not doubtful. The title to exact petty customs in a burgh is not the table of customs issued to the tacksman. The title is the

title of the magistrates flowing from the Crown. The table is merely for the tacksman's guidance; but, undoubtedly, the man into whose hands that table is put as his authority from the magistrates to collect, cannot go beyond the table. He cannot collect any customs that are not in it, or any higher customs than are in it. Moreover, the table under which the tacksman is authorised to collect is a distinct and formal statement and admission by the magistrates that they are not entitled to collect any other or higher customs than are stated in it. In that sense it is pleadable against them in any question such as now arises; but of itself it is no evidence either in their favour or in favour of the tacksman. Then again, it does not require to be contradicted by subsequent usage. I mean, it does not require to be contradicted by subsequent usage in order to prevent it being of itself evidence of any kind, as at its date, of the right to exact. If forty years' usage follow upon it, then the table and the usage together, or rather the usage, fixes the lawfulness of these exactions. But if usage for forty years follows after the date of the table, contrary to the table in the sense of exacting less than is in the table, that is quite sufficient to prevent it from acquiring any authority. If for forty years after the date of the table certain articles in it which bear to be liable to customs don't pay them at all, the consequence of that is that the right to exact them is gone. That has been decided again and again. On the other hand, if for forty years after the date of the table duties have been exacted on these articles, but of less amount than the duties stated in the table, that again fixes that the magistrates and their collectors are not entitled to exact any larger amount. That also has been decided again and again. It follows from that, that if the Court intended to affirm anything contrary to what I have now stated—if the Court intended to affirm that that table in itself was authority to exact the full amount of certain customs contained in it—either for forty years and upwards the usage had been to exact less in a number of these articles—it is very clear to my mind that the Court were affirming that which never was supposed to be the law since I at least knew anything about the law of petty customs. Now that is not very likely, and it is not easily to be presumed. But the construction put on what the Court did seems to be that, so far as regards the amount of the petty customs, we affirmed that though forty years' usage followed on the table to exact a smaller amount than the customs stated in it, that was not to be looked to, but that the amount stated in the table was to stand. That is in substance the construction now proposed to be put on what we did. I can only say for my own part that I am very sure we never intended to do that, and if we had not construed the interlocutor of the Lord Ordinary in a different sense from that, we never would have affirmed it. The Court did not construe the interlocutor of the Lord Ordinary in a different sense from that. On the contrary, we construed it in that sense, and I don't think that was at all an unreasonable construction of this interlocutor on the face of it, because in the outset it affirms that, notwithstanding the entries in the table, if for forty years after the date of the table certain of these customs were not exacted at all, the right to exact them has gone. That is affirming the principle in the most direct terms, and it necessarily follows from that as matter of consistency that if for forty years less has been exacted, for the very same reason less must continue to be exacted, and they could not go back on the table. Well, an interlocutor containing a finding such as I have mentioned in express terms, and nothing to the contrary in the other parts of it, was naturally construed by the Court as being not inconsistent with the law as I have stated it, and it was in that sense that we affirmed that interlocntor. Now, whatever may be the meaning which the Lord Ordinary may have put on his own interlocutor before it came here, I take it to be clear that when the Court adheres to an interlocutor in a certain sense—construing it in a certain sense and expressing opinions which show very clearly that we did construe it in that sense—the judgment of the Court is an adherence to that interlocutor in the sense which the Court put upon it. Now, I put that sense on the interlocutor then, and I put that sense on the interlocutor now, and it was undoubtedly in that sense that we adhered to the interlocutor. If that be so, then that is the sense in which the interlocutor must be carried out, and it follows that when the detailed table came to be prepared it was the duty of the party to whom the remit was made to prepare the table—not to look to the table merely—but to look to what had followed on the table; to consider the whole proof along with the table; to see how far it had been departed from in his opinion—his opinion and his report not being final, but being subject to the consideration of the Lord Ordinary and the Court. Now, what it humbly appears to me the reporter should have been instructed to do, and what I think he must do still if the case is to go back to him, is to look at the proof, to hear the observations of the parties upon it, to consider how far the construction which they put in the proof is or is not a correct construction, and to be guided so far as he sees no reason to the contrary by the construction which they put upon it. No doubt, in a case of this kind, where the public are interested, we don't altogether by any means commit it to the parties to frame a table which is to be used against the public or the community, and the reason of that is quite plain; but it does not follow in the least that all reasonable concessions and reasonable suggestions made by parties who must have access to know a great deal about it are not to be taken into account and considered, and given all the effect to that the reporter can give to them consistently with what he sees before him in the proof. I can have no doubt at all that great aid must be derived by the reporter, if he frames the table, or by the Court if we frame it ourselves, from the observations of the parties, though of course it is our duty to take care that there is no collusion about it for a purpose that cannot be sanctioned. It certainly did not occur to the Court that the proof was not to be looked to, and that on looking at the proof the party framing the table was not to listen to and give what effect he thought proper and reasonable to the observations or suggestions made on either side, and more particularly to those observations and concessions which now go to prevent too much from being exacted from the public, because that is really the material thing, and that is the great reason why we would not intrust it altogether to the parties. The parties might have an interest to make the exactions from the public greater than they ought to be, and the thing to be jealous about is that that is not done, and that too much is not exacted from the public. And in order to get at that the right way would be for the reporter to read the proof, and

having read the proof, to hear the observations of the parties, and, so far as he saw no reason to suspect anything of the kind I have mentioned, to give fair and reasonable effect to these observations. That, as I understood it, was the sense of our interlocutor, and it is unfortunate that there has been any misunderstanding about it; I am afraid, however, we can do nothing else but direct in some way or other that that meaning of the interlocutor shall be fairly carried out still.

Lord Ardmillan—It appears to me that there has been some misapprehension as to the true meaning of the interlocutor of the Lord Ordinary of 30th June 1865, and of the interlocutor of the Court of 1st June 1866, adhering to that judgment. It is a delicate, and by no means an agreeable duty, to express a different opinion in regard to the meaning of the interlocutor from that expressed by the Lord Ordinary who pronounced it, and who may naturally be supposed to be best acquainted with its meaning. But no misapprehension ought to be permitted to present an obstacle to the doing of justice. If the true meaning of the interlocutor of 30th June 1865 is, that the table of 1772, "according to the true intent and meaning of the same," as ascertained by its terms only, is absolutely conclusive of the right of exaction, except only in cases where the duties have altogether ceased to be exacted for forty years; then I must frankly say that, on that construction of the interlocutor, I did not concur, and would not have adhered to it in June 1866. I did not then think that that was the meaning of the judgment of the Lord Ordinary; and I am quite satisfied that was not the meaning of the judgment of the First Division in adhering to it. According to my view at the time, and according to the best opinion I can now form on reconsideration, the table of 1772 was not the title of the exaction by the Magistrates. Their title rests on the old charters in the fifteenth century and the later charters in the seventeenth century. The table was the proclamation of the charges or duties which they considered themselves entitled to exact, and, in so far as it was followed by actual exaction, it is effectual. But "use and wont" is at the foundation of the original right to exact, and the effect of long-continued use and wont cannot be excluded in an action such as the present. I think that the table of 1772 was dealt with by the Lord Ordinary and by the Court as the limit of the right of exaction, so that the Magistrates are not entitled to levy higher duties. But, at the same time, I think that if the table has not been acted on, and if duties have for forty years ceased to be levied, then the right to exact such duties has been lost. They cannot be exacted after forty years' cessation according to use and wont. But further than this, I am of opinion that, if the duties in the table have, in any instance, ceased for forty years to be exacted up to the measure of the table, that cessation *pro parte* must receive effect, in like manner as the cessation *in toto* to which I have already adverted. There can be no exaction of a duty on any article which has not paid duty for forty years, and no exaction beyond the amount of duty which has for forty years been exacted on any article according to use and wont.

In this sense I understood the interlocutor of 30th June 1865, and in this sense I concurred in adhering to it. "True intent and meaning" of the table of 1772 is to be ascertained not simply by reading its words and figures, but by reading it by the aid of the light derived from considering the whole history of the exaction under it, and the use and wont in regard to it which has existed for forty years. I do not think that the expression "true intent and meaning" implies merely the correct verbal meaning of the phraseology of the table. I think it means the "true intent and meaning" of the table as explained by use and wont.

The accountant appears to have been directed by the Lord Ordinary that he was not entitled to control or modify the rates of exaction in the table of 1772 by referring to the proof, except only to prevent exaction higher than the table, or to prevent exaction of rates which have altogether ceased to be levied for forty years. The effect of use and wont for forty years in the exaction of duties lower than those on the table is excluded by this direction; and on this direction the accountant acted. In my opinion it has been erroneously excluded; and I think that the case should now be remitted for adjustment of a table according to the true intent and meaning of the table of 1772, as ascertained by careful comparison of the charges and duties therein contained with the use and wont of exaction for forty years, as instructed on the Proof.

We have been informed that the parties to this process had adjusted a table for themselves. I do not think that, in a question of this kind, where public interests are involved, a private adjustment can be altogether satisfactory or sufficient; though there can be no doubt that in this case it would be fairly and honourably proceeded with. The safest and best course is to make a new remit, with instructions to the accountant to hear the parties, and to take the proof into consideration in adjusting a new table on the basis of the table of 1772, as explained by use and wont for forty years.

Lord President—It is certainly very much to be regretted that there should have been any misunderstanding between the Lord Ordinary and the Judges of the Inner House as to the meaning and effect of his interlocutor; but I agree with your Lordships that there can be no doubt as to what is the law applicable to a case of this kind. The Magistrates of Dumfries have what may be called a general title. There are charters more than one, and there is an Act of Parliament in 1681, but the effect of these titles is merely to give them a right generally to exact custom or toll of the description in question. None of these titles afford any measure of the right to be exercised by the Magistrates, and, consequently, that is to be founded, as is usual in all such cases, on use and wont. Now looking at the record in this case and the conclusions of the summons, it appears to me that both parties emphatically appeal to use and wont, or immemorial usage as they call it, as the only principle upon which their rights can be settled. The pursuers ask for a reduction of certain tables of duties—one of them the table of 1772, and the other a modern table of 1854—which they contend are inconsistent with the usage, and they further ask for a declarator that the defenders have no right or title to levy or collect any duties 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. That

is, immemorial usage as traced backwards from the present time, and the pleas in law for the pursuers are precisely in accordance with these conclusions of the summons. On the other hand, the defenders do not pretend or assert any right except that which is at least consistent with immemorial usage. They plead that, as representing the burgh of Dumfries, they are, in virtue of the charters and Act of 1681, and immemorial usage, entitled to exact and levy the customs in question. And again, in the 2d, the 4th, and the 5th pleas, which are really the important pleas upon record for the defenders, everything is made to rest upon the allegation of immemorial usage of exaction. Now it rather appears to me that the natural conclusion from all this is, that with the rule of law so well established, and with the pleas of parties so clearly consistent with the general rule of law, it is quite impossible to decide this case, or to come to any practical conclusion as to what the rule of exaction is to be in time to come, without not merely ascertaining what the immemorial usage is, but making the judgment of the Court and any table of fees that is to be constructed quadrate precisely with that immemorial usage. But we are told on the one hand, and it does not seem to be seriously disputed on the other, that the table which has been framed and reported by the accountant is not consistent in all respects with this immemorial usage, but that, on the contrary, it is in some respects a table of rates higher than that which has been for sometime exacted by the Magistrates of Dumfries. That is a practical result which it is quite impossible to sustain consistently either with the true principles of law applicable to this case, or with the pleadings of parties on record. That of itself is sufficient to convince me that the proceedings before the accountant, recently at least, must have been upon some mistaken basis altogether. And when we look back to the series of interlocutors and instructions which the accountant received, and to what he himself reports that he has done, we see plainly enough that he has been desired to construe, and has construed, the interlocutor of 30 June 1865 in such a way as to make a table of duties that is not conformable in all respects with immemorial usage. Now that must be rectified, and in what way that is to be done is the only remaining question. I agree with your Lordship's suggestion that there must be a fresh remit to this gentleman, with different instructions from these which he has hitherto received. Perhaps, strictly speaking, it may be the duty of the Court to ascertain with respect to every single item proposed to be levied for the future in any new table to be now constructed whether it is consistent with immemorial usage as disclosed to us by this proof; but I need hardly say that for the Court itself to perform that duty directly would be a mere waste of judicial time, and probably it may be not only more expeditiously, but fully as efficiently discharged under the directions of the Court by a professional man, such as Mr Ogilvy. Not that I would leave to his unaided consideration of the proof the fixing of what is the immemorial usage with reference to every one of the items of the proposed table, but I think he may, with the aid of the parties, and with concessions upon their side which may be most legitimately taken into account by the Reporter, be enabled to extract the true import and effect of the proof, and to apply it to the construction of the table. I don't in the least doubt that if instructions to that effect are given to him in the interlocutor of Court we shall have a result that will be quite satisfactory to both parties, and at the same time consistent with the rights and interests of the public. I therefore concur with your Lordships in the proposition which has been made for this new remit.

The following interlocutor was pronounced:—

"The Lords having considered the reclaiming note for Wellwood Herries Maxwell and others, No. 153 of process, and heard counsel,—Recal the interlocutor of the Lord Ordinary submitted to review. Find that in framing the table of bridge customs to be levied by the defenders in time coming, no item or charge can be admitted that was not at the date of raising this action in use to be levied for forty years or time immemorial; remit of new to the accountant to frame a table in conformity with this finding, and for this purpose to examine the proof, and with the assistance of the parties to ascertain what items in the table of 1772 have been in use to be levied for forty years, or time immemorial, upon what kind of goods, and and at what rates, and to report. Find the pursuers entitled to expenses since the date of the Lord Ordinary's interlocutor, and remit the account when lodged to the auditor to tax and to report."

Agents for Pursuers—Scott, Bruce, & Glover, W.S.

Agent for Defenders—Wm. Kennedy, W.S.

Friday, December 18.

LEDGERWOOD *v.* M'KENNA.

Nuisances Removal Act 1856—*General Police Act* 1862—*Adoption of General Act—Expenses—Justice of Peace—Small Debt Decree—Decree-conform—Jurisdiction.* Part 7 of the General Police Act 1852, amending the Nuisances Removal Act 1856, applies wherever the latter Act is called into operation, and is not dependent for its efficacy on adoption of the Act of 1862.

It is incompetent to sue in a Small Debt Court for the expenses found due in proceedings under the Nuisances Removal Act.

In October 1866 the defender, inspector of poor for the parish of Girvan, and prosecutor appointed by the Parochial Board under the Nuisances Removal Act 1866, obtained a decree under that Act from the Justices of Ayrshire against the pursuer, ordaining him to remove a certain nuisance from his premises, and finding him liable in expenses. A Small Debt action was raised for these expenses, the account sued for being in these terms, "1866, Oct. 31.—To sum of expenses due by the defender to the pursuer and contained in a finding or decree of the Justice of Peace Court at Girvan, pronounced of this date, in a petition and complaint at the instance of the pursuer against the defender, dated tenth October 1866, proceeding and founded upon The Nuisances Removal (Scotland) Act 1856, conform to said petition and complaint and finding or decree annexed thereto, herewith produced, £2, 18s. 5d;" and a decree of the Justices was obtained therefor. The pursuer now sought to reduce these decrees. He maintained that the Justices had no power under the Nuisances Removal Act to award expenses, and that it was *ultra vires* of the Justices in the Small Debt Court to entertain a claim for expenses incurred in another suit. The defender