leave the case to be tried by Jury. I further think that the case is a very proper one to go to a Jury, and I do not see that it involves any special difficulty.

LORD DEAS concurred.

LORD ARDMILLAN—As the law and practice of the Court stands, this is a case which would go to a jury. It is one of the enumerated causes, and its natural and appropriate course is that it be tried by a jury. The defender desires that it may be so tried. So we have not the consent of both parties to a trial without a jury.

There remains the power given to the Lord Ordinary to dispense with a jury, and try it by a proof under the Evidence Act, in respect of *special cause*—a cause peculiar to *this* case. But I cannot perceive such special cause. There can be no departure without consent and without special cause, from the general rule. I therefore agree with your Lordship.

LORD MURE concurred.

The Court held that the case must be tried by Jury.

Counsel for the Pursuers—Balfour. Agents—Webster & Will, S.S.C.

Counsel for the Defenders—Solicitor-General (Watson) and Macdonald. Agents—Murray & Anderson, W.S.

Tuesday, January 19.

FIRST DIVISION.

[Sheriff of Lanarkshire.

ARMSTRONG AND OTHERS *v.* M'GREGOR & CO.

Sale—Ship—Usage of Trade.

In a case where a ship was sold "with all belonging to her on board and on shore,"—*held* that the contract carried the chronometer, unless excluded either expressly or by usage of trade, which in point of fact had not been proved.

Messrs Handyside & Henderson, shipowners, Glasgow, on January 30, 1871, sold the s.s. Macedon to Messrs Armstrong, "with all belonging to her, on board and on shore." The question was, whether this contract carried the ship's chronometer. At the time of the sale the chronometer was in the hands of Messrs M'Gregor, chronometer makers, for the purpose of being put in order. Just before the vessel sailed the chronometer was brought on board by Messrs M'Gregor, who were ignorant that a sale had taken place, and was brought back to Glasgow after the voyage and again taken on shore by Messrs M'Gregor. While it was in their hands it was claimed by Messrs Handyside and Henderson and by Messrs Armstrong, and they accordingly raised this multiplepoinding in order to have the rights of parties determined.

The Sheriff-Substitute (BUNTINE) pronounced the following interlocutor:—

"*Glasgow, 29th April* 1874.—Having heard parties' procurators on the proof and whole process, and made avizandum, Finds that the chronometer in question is the property of the claimants William John Armstrong and others, having been included in the memorandum of sale of the s.s. Macedon, No. 11/1 of process: Therefore, in the original action at the instance of William John Armstrong and others against D. M'Gregor & Company, repels the defences, and ordains the defenders within six days to deliver over to the pursuers the chronometer in question, under certification. (2) In respect of the above finding in the said first action, dismisses the action of multiplepoinding, reserving to pronounce further, and to dispose of the question of expenses.

"*Note.*—The question in this case is, Whether a chronometer belonging to the owners of a ship passes to the purchaser under a clause in the bill of sale, 'with all belonging to her on board and on shore.' The chronometer happened to be on shore at the time of the sale, but this circumstance does not affect the result of the case; as, if it were truly one of the belongings of the ship, it does not matter whether it was on board or on shore. After a careful consideration of the evidence, the Sheriff-Substitute is of opinion that Messrs Handyside & Henderson, and their agent Mr Wilkie, who sold the vessel, never imagined that this clause included the chronometer; while, with equal honesty the purchasers believed that they bought the ship with everything on board of her, or on shore, which was necessary to her proper navigation. In these circumstances it is important to consider if, in common and in maritime practice, a chronometer is a necessary appurtenance of a ship.

"That the possession of a chronometer was necessary for the proper navigation of this ship is evident from the fact that she had one during all the time that she belonged to Messrs Handyside & Henderson; and when the Messrs Armstrong were deprived of the use of the chronometer in question in this case, they immediately supplied another. It may be that by the rules of the Board of Trade there is no obligation upon owners to have a chronometer on board of a vessel; still, in the case of owners with the reputation of the parties to this cause, a chronometer is, and very properly, a necessary appurtenance of their sea-going ships.

The next consideration of importance is, that the ship was bought for the purpose of immediate use, and it must have been in the view of both purchaser and seller that nothing required to be done in the way of supplying fittings or gear to enable her to start immediately for Gibraltar.

"It was as if they had bought the ship as she sailed on her voyage. In such a case, unquestionably a chronometer, the property of the owners, would pass if not specially excepted, and it was so decided in the case of *Langton* v. *Horton*, Law Journal Rep., new series, vol. ii. p. 299, 6th June 1842; 20 L. J. Chanc.

"The fact that in this case the chronometer was on shore for the purpose of being repaired is not material. The law on this point is well stated in Parsons on Shipping, vol. i. p. 79, *et seq.*:—'Everything on board a ship for the objects of the voyage and adventure in which she is engaged, belonging to the owners, constitutes a part of the ship and her appurtenances.'

"It is quite true that the usage of the port must be considered, because things 'may be part and parcel of a ship at one time and place, and under some circumstances, and not at others.'

"Most properly, therefore, it was attempted by

the claimants, Messrs Handyside & Henderson, to prove by witnesses that, by the usage of the port of Glasgow a chronometer belonging to the owners would not pass under the clause in question.

"Unfortunately, the present Sheriff-Substitute did not have the advantage of taking the evidence in the cause. Undoubtedly, in numbers, the witnesses in support of Messrs Handyside & Henderson's contention outweigh those for the other claimants; but when their testimony is carefully considered it does not, in the opinion of the Sheriff-Substitute, establish a usage contrary to that deponed to by Mr J. S. Dickie, the only witness for the claimant Armstrong. That gentleman has large experience both in Glasgow and London, and has sold no less than six steamers during the last year, and his evidence is given with great clearness, and is consistent and convincing throughout.

"He says, p. 35—'There is no special usage as to whether a chronometer passes with a ship or not. It is matter of agreement.' In most cases where ships are sold with all belonging to them there is an inventory, and the chronometer is excluded or included by arrangement. In many cases the chronometer belongs to the captain, but where it is not specially excepted, and belongs to the owners, the chronometer passes to the purchaser.' The witnesses who speak to the contrary usage mention cases where chronometers did not pass; but it is to be remarked that one well-authenticated instance where the instrument did pass is worth five or six where it is said it did not; because in the latter cases there may have been no chronometer, or, if there were one, it may not have belonged to the ship, but to the master; or it may have been taken out of the ship by design, or expressly excluded from the inventory.

"The strongest evidence led for Handyside & Henderson is their own usage; for it appears that certain other ships were sold with the same clause as this, and that the chronometer did not become the property of the purchaser.

"In answer to this, however, we find Messrs Handyside & Henderson, when they sell the Spartan, expressly excluding the chronometer; and it does not appear that the other vessels had chronometers on board, or that the purchasers were informed that the ships did possess such instruments.

"In the present case, had this chronometer not been by mistake put on board by M'Gregor after the sale, it would probably never have been claimed by the purchasers, because they would not have known of its existence.

"But what influences the Sheriff-Substitute in disregarding what seems to be the strong evidence of usage is, that proof of usage is only to be introduced to interpret a contract which is ambiguous.

"In the view of the Sheriff-Substitute there is no ambiguity in the clause, 'with all belonging to her.' It means all her necessary appurtenance—everything that is essential for her proper navigation, or is habitually used for that purpose, whether absolutely essential or not, if it belongs to the owners. A fixed chronometer is part of a ship, as much as her compass, or her masts, sails, or rigging."

Messrs Handyside and Henderson appealed.

The Sheriff (DICKSON) pronounced the following interlocutor:—

"*Glasgow*, 21*st October* 1874.—Having heard parties' procurators on the appeal of the claimants Handyside and Henderson, and considered the record and proof in the conjoined actions, For the reasons stated in the note hereto, Repels the defence stated by the claimants Armstrong and others to the competency of the multiplepoinding: Finds that the chronometer in question is the property of the claimants Handyside and Henderson, and accordingly assoilzies the party, M'Gregor and Company, from the conclusions of the petitory action: Sustains Handyside and Henderson's claim in the multiplepoinding: Ranks and prefers them to the chronometer in question; and accordingly decerns and ordains the nominal raisers, D. M'Gregor and Company, to deliver it to the said Handyside and Henderson, and on their doing so exoners and discharges them of all claims with reference thereto at the instance of the other claimants Armstrong and others, owners of the 'Macedon,' under the present actions: Finds the said Armstrong and others liable to Messrs M'Gregor and Company, and Handyside and Henderson respectively in expenses in both actions: Allows accounts thereof to be given in, and remits the same, when lodged, to the Auditor of Court to tax and report: Also remits to the Sheriff-Substitute to decern for the amounts of the said respective accounts of expenses when taxed, and decerns.

"*Note.*—The question is, Whether the chronometer in dispute was included in the sale of the '"Macedon," with all belonging to her on board and on shore.' The Sheriff-Substitute decided that question in favour of the claimants Armstrong and others, on the ground that there is no ambiguity in the clause, which (he says) means—'All necessary appurtenances of the vessel, everything that is essential for her proper navigation, or is habitually used for that purpose, whether absolutely essential or not, if it belongs to the owners; a fixed chronometer being' (he considers) 'part of the ship, as much as her compass, or her masts, or rigging.' Having that opinion on the construction of the contract, the Sheriff-Substitute naturally disregards the proof of usage of trade, while observing that it is in favour of Messrs Handyside and Henderson.

"The Sheriff does not think that the case should be decided on this footing, for it makes the definition of what belongs to, or is an appurtenance of, a vessel, depend not on what is understood to be so by the parties, or in the trade, but on accidental circumstances, with which the purchaser is not likely to be familiar. It assumes an intention on the part of the seller to include under the term 'belonging to the ship,' what may not properly do so, and it takes as identical two classes of articles which are not necessarily so—viz., those belonging to the ship, and those belonging to the owners and used in the ship.

"The proper principle of interpretation is thought to be the same as in all mercantile contracts,—that unless where general words have a recognised meaning in law, the question what they include is not to be decided by paraphrasing or amplifying them, without regard to their understood meaning according to the usage of the trade; but, on the contrary, with special reference to such usage, as being that which the parties are presumed to have had in view when contracting. (See Bell's Commentaries, 465, and cases noted in the Sheriff's work on the Law of Evidence, sec. 232 *et seq.*) On this principle it was held, in an American case (*Richardson* v. *Clark*, quoted in 1 Parsons on Shipping, p. 81), that, 'in the absence

of any agreement of the parties or proof of usage of trade, a bill of sale does not include the chronometer as an appurtenance of the ship.'

"Dealing with the case on this footing, it will be observed that the claimants Armstrong and others don't pretend that the usage of trade is in their favour. Messrs Handyside and Henderson aver and lead proof to show it is in theirs. The evidence on the point is clearly and decidedly so. It consists of the evidence of Mr Wilson, with 28 years' experience in Glasgow, speaking to the meaning of such a clause according to the custom of trade, telling of three instances in which that meaning had been given effect to, and adding the important fact, that a shipbuilder in sending out a ship fully equipped for sea does not find chronometers for her. He also says that in delivering ships he always takes out the chronometer. William Jacks, manager for Robinow and Marjoribanks of Glasgow, who sell a great many steamers, gives similar evidence; so do R. M'Kill, chief clerk to Burrell and Son, shipbrokers in Glasgow; J. Wilkie, a shipbroker, who negotiated the sale in question; and Thomas Henderson, of the claimants' firm. The only evidence on the other side is of Mr Dickie, shipbroker, who says there is no special usage on the matter; but his experience is chiefly of sales by inventory; and he supports Handyside and Henderson's view to a considerable extent, in saying,—'We have sold ships without a chronometer, or anything said excepting it.' The fact that chronometers often belong to the master of the vessel supports the same view.

"The Sheriff considers the strong and clear evidence on this point to be conclusive of the present question.

"Parole evidence has also been led as to the intention of the respective parties under the contract. Without expressing any opinion whether that line of evidence might have been objected to when tendered, the Sheriff sees no reason for refusing to consider it when led without such objection.

"It is clearly proved that Handyside and Henderson directed Mr Wilkie not to sell the chronometer, and that he did not intend to do so. The statement of the latter that he said so expressly to Mr Armstrong is contradicted by that gentleman; and, not being corroborated, must be disregarded. On the other hand, Armstrong and his co-owner, James Hay, who negotiated the purchase together, say that nothing was said about a chronometer at the time; and neither of them had any previous experience in buying ships, and evidently no understanding that the sale included such an article. The fact that it was not on board at the time of the sale shows that they had no reason to suppose that it was included. There being no understanding at all on one side, and a clear understanding and intention on the other, the Sheriff considers that there was no mutual consent to the chronometer being included in the sale. If the purchasers are disappointed in this, it is their own fault in having bought under a general description without previous knowledge and without inquiry at the time as to what that description included, according to the custom of trade.

"The history of the chronometer in question, and the way in which Handyside and Henderson deal with all chronometers of their vessels, is not inconsistent with this view, but the contrary; because (1) the chronometer had not the ship's name on it; (2) it had been only used for one year in that ship; (3) when on board it does not appear to have been fixed into any part of the ship; (4) M'Gregor and Company had a number of chronometers belonging to Handyside and Henderson, which were used almost indiscriminately for all their ships; and it was thus an accident that the chronometer which M'Gregor and Company returned to the ship was the one in question, and not one which had never been in the ship before.

"The case of *Langton* v. *Horton*, quoted by the Sheriff-Substitute, is considered not to indicate that the general words in question have a fixed meaning in law. That was a dispute as to what passed under an assigment of a ship at sea with all her appurtenances; as to which Sir J. Wigram, V.C., held 'with regard to the chronometer, that the ship being at sea on the date of the assignment, with it on board, the assignment was effectual to pass the chronometer.' The great difference between that case and the present as to the nature of the deed under which the question arose, the place where the chronometer was when the deed was executed, and the absence apparently of any proof of usage of trade, prevent the decision being a precedent for this case. Besides, the Sheriff cannot recognise the opinion of a single judge in an English Court as settling the law on such a matter in this country. The American case already quoted, in which a different rule is recognised, is thought to be much more consistent with the true principle of interpretation of mercantile contracts.

"The Sheriff does not agree with the Sheriff-Substitute that the bill of sale of the Spartan, belonging to Handyside & Henderson, in which the chronometer is specially excepted, is at all inconsistent with the view thus explained. It merely shows that these gentlemen, like prudent men, wished to avoid any difficulty or dispute in future, by expressing what they had previously left to the general understanding and usage of trade.

"It was contended for Messrs Armstrong and others that whatever may be the ultimate right of Handyside & Henderson to the chronometer, it may not be given effect to in the present proceedings, because M'Gregor & Company got the article out of the ship on a special undertaking to return it to the shipowners. The Sheriff does not think that these parties are entitled to plead so highly on their possession during one voyage—originally under a mistake of M'Gregor & Company's servant, and without the knowledge of Handyside & Henderson.

"Assuming that the article belonged to the latter at the time, the shipowners had no right to impose such a condition; and, at all events, the true proprietors of the article ought not to suffer because the condition was agreed to by one for whom they are not responsible. Moreover, upon the principle *frustra petis quod mox es restituturus*, Armstrong and others should not be restored to the possession of an article which they are bound immediately to return to the other claimants."

Messrs Armstrong appealed.

Authorities—Bell's Comm., i. 465; M'Laren, 440, (Ed. 5); *Kircher* v. *Venus*, Feb. 4, 1859, 12 Moore P.C. 361, (Lord Kingsdown, 399); *Sweating* v. *Pearce*, 1861, 9 Scott Comm., Bench, n.s. 534; Parsons on Shipping, i, 78–81 note; *Mollett* v. *Robinson*, May 30, 1871, 23 Law Times, C.P., n.s. 185; *Langton* v. *Horton*, June 6, 1842, 11 L.J. Chan. 299; *Gale* v. *Laurie*, 1826, 5 Barn and Cress. 156, *Dundee*, 1 Haggart Adm. Rep., 109.

At advising—

Lord President—My Lords, the memorandum under which the sale of the Macedon was made bears date November 30, 1871, and is in these terms:—"John Wilkie, acting as broker for owners, agrees to sell, and W. J. Armstrong and James Hay, jointly and severally, agree to purchase the screw-steamer Macedon, now at Glasgow, with all belonging to her on board and on shore, for the sum of five thousand one hundred and fifty pounds (£5150) immediate settlement, and cash against bill of sale; two hundred and fifty pounds deposit payable by buyers on signment hereof." The question which has arisen under this contract is whether or not it carries the chronometer. Now, it must be borne in mind that the Macedon was a sea-going ship for which a chronometer was necessary, and it must also be borne in mind that the words used have no technical sense, and so, apart from any interpretation put upon them by usage of trade, they must be fairly and reasonably interpreted. It has been said in the course of the argument that nothing can be said to belong to a ship unless it is specifically appropriated or devoted to that ship, and even that it would be necessary to have the ship's name on it. I cannot entertain that idea as a reasonable one. Things may belong to a ship which might be used just as well in any other ship. There are many small things belonging to a ship which may be transferred from one to another, such as nautical instruments, charts, tools, &c., without which it would be impossible to get on in the voyage, and why the chronometer, which is just as necessary as any of them, should be held not to fall under the same category I cannot see. Its peculiarity seems to be that it does not remain constantly on board the vessel, but the reason for that is that it is necessary that it should be taken on shore from time to time in order to be rated. In practice, when a sea-going ship returns from a voyage the chronometer is taken to the makers, and stays there till the next voyage, but it does not on that account cease to belong to the ship. It may be transferred from one ship to another, and perhaps more easily than most things, but with that exception I cannot see any difference between a chronometer and any other instrument; they are all equally necessary and cannot be used except in reference to each other. Now, I confess I see no ground for any distinction. The law, so far as there is any law in the matter at all, is well expounded in the *Dundee* case, which came first before Lord Stowell in the Admiralty Court, where the question was to what extent the Dundee was liable for damage done by a collision, under the Act 53 Geo. III., cap. 159. The Dundee was a whaler bound for the Greenland fishery, and a question arose whether the fishing stores fell under the term "appurtenances." It was contended by the owner of the sunken vessel that all stores necessary for the purposes of the particular voyage on which she was sailing were included in that word. Lord Stowell announces the principle of law in these words:—"A cargo cannot be considered as appurtenances of the ship, being that which is intended to be disposed of at the foreign port for money or money's worth vested in a return cargo. Its connection with the ship is merely transitory, and it bears a distinct character of its own. But those accompaniments which are essential to a ship in its present occupation not being cargo, but totally different from cargo, though they are not direct constituents of the ship (if indeed they were they would not be appurtenances; for the very nature of an appurtenance is that it is one thing which belongs to another thing) yet if they are indispensable instruments without which the ship cannot execute its mission and perform its functions, it may in ordinary loose application be included under the term ship, being that which may be essential to it—as essential to it as any part of its own immediate machinery." Accordingly sentence was given against the owners of the Dundee for the value of the ship, including her fishing stores. Proceedings in the same case were afterwards taken in the Court of Queen's Bench in the shape of a prohibition against the execution of the sentence, which came before Lord Chief-Justice Abbott, a very high authority on such questions, and the Court arrived at the same result as Lord Stowell, the Lord Chief-Justice observing:—"We think that whatever is on board a ship for the object of the voyage and adventure on which she is engaged belonging to the owners, constitutes a part of the ship and her appurtenances within the meaning of this Act, whether the object be warfare, the conveyance of passengers or goods, or the fishery." Now, giving effect to that judgment, the question one naturally asks is whether the chronometer was necessary for the voyage, and the answer must be in the affirmative. It is said to be a peculiarity in this case that the chronometer was not on board at the time of the sale, and that therefore the judgment of Vice-Chancellor Wigram in the case of *Langton* v. *Horton* does not apply. Now, that seems to me to be a very narrow distinction to draw, and I can see no sound principle for it, for this chronometer would not have been absent from the vessel except for the purpose of making it useful for the next voyage, and so we find that the maker, who knew nothing of a sale having taken place, brought it back again as a matter of course. The chronometer was understood to belong to the ship, and thus was in use to be taken away and brought back as matter of course. I think it was as clearly belonging to the ship as anything could be. Yet we are told that the usage of the trade does not include a chronometer in such a sale as this. I think it would be a very curious usage which selected the chronometer for such exclusion, but I am quite satisfied that no such usage has been proved; indeed, I never saw a more inadequate attempt to prove usage. You must have a thing universally understood and acted on in order to establish usage, and if your Lordships will only think whether on the evidence before us you are prepared to affirm a principle of consuetudinary law you will see how weak the evidence is. I am for adhering to the judgment of the Sheriff-Substitute.

Lord Deas—I am of the same opinion as your Lordship. I think that, *prima facie*, we have written documents showing that the chronometer should be carried to the purchaser, and not only so, but I think the case becomes even stronger against the defenders when it is admitted that a variety of similar articles are carried by this document. The moment that is admitted, it follows that it would require a very strong and distinct usage of trade which would exclude a chronometer and include other articles of the same description.

They might all be perfectly well taken on shore, though the chronometer peculiarly requires to be so, but it would need a very strong proof of usage to exclude the chronometer on that ground from the rule which applies to the rest. I agree with your Lordship that the alleged proof is of the weakest possible description, and not at all sufficient to overcome the presumption arising on the face of the document. Added to all that, there are two things to be observed—(1) That the owner thought it necessary to direct Mr Wilkie specially to except the chronometer. Why did he do that if he knew that it did not pass with the rest of the things? (2) This was a sale which took place just before the vessel sailed, and it was not to be supposed that she would sail without a chronometer. I think every one of the circumstances is in favour of the purchaser.

Lord Ardmillan—In this case the Sheriffs have differed, and I cannot say I think it is an easy case. It is only after considerable hesitation that I have come to be of the same opinion as your Lordships. The view which I take is this—Where the words of a written bargain are clear, no proof of usage is competent. When the words of the written bargain are loose, such proof is competent, but it must be clear and full. I cannot say that I think the words of this contract are so clear as to make proof of usage incompetent, but when usage is proved it must amount to a rule of trade which both parties must be held to have known. The proof here shows that the chronometer was uniformly kept on board except when it was taken on shore for the specific purpose of rating, and it does not matter that at the time of this sale it happened to be on shore. Neither is it of importance that it was sent on board again, for it is admitted that the maker was ignorant of the sale of the vessel; but it is of importance, as Lord Deas says, that the ship was on the point of sailing, or in other words on the point of requiring her chronometer. She was in the position of a vessel sold by her *owners;* it is allowed that *builders* do not supply such things; the owners who buy from them select what things they want from an inventory; but here the chronometer had been on board during the previous voyage. I think that, so far as it goes, the proof is rather in favour of the seller, but even taking it at its best, it does not amount to settled usage. Therefore I think that enough has not been instructed by the defenders, on whom lay the *onus* of taking off the effect of the comprehensive words of the contract.

Lord Mure—I arrive at the same result as your Lordships. I think the terms of this contract are quite as strong as those in the English cases referred to; and I think it was quite sufficient to carry the chronometer, which was essential to the voyage as much as any of those other things which admittedly passed under it. I think the words in the contract are quite as strong as the word appurtenances; and as regards the question of usage, I hold the proof of it to be by no means sufficient.

The Court pronounced the following interlocutor:—

"Recal the interlocutors of the Sheriff-Substitute and the Sheriff, dated respectively the 29th April 1874 and 21st October 1874; Find that when the appellants, in the month of November 1871, purchased the screw-steamer Macedon, then lying at Glasgow, 'with all belonging to her on board and on shore,' under the memorandum of sale No. 11/1 of process, the chronometer in question on shore belonged to her; find that it is not established by the proof that there is any local or general usage of trade that under such a clause the ship's chronometer was not included or intended to be included in the said purchase; but find that the chronometer in question did, in terms of the said clause, pass with the said ship at the time of the said purchase, and is the property of the appellants, William John Armstrong and others; therefore, in the original action at the instance of the appellants against the respondents D. M'Gregor & Company, repel the defences, and ordain the said respondents (defenders) to deliver to the appellants (pursuers) the chronometer in question in terms of the conclusions of the summons, and decern; *quoad ultra*, in respect the remaining conclusions are not insisted in, dismiss the action, and decern; and in the action of multiplepoinding, in respect of the foregoing findings and decree, dismiss the action and decern: Find the respondents D. M'Gregor & Co. liable to the appellants in the expenses of the original action in the Inferior Court, both before and after conjunction; but find the said respondents D. M'Gregor & Co. entitled to be relieved of said expenses by the other respondents Handyside and Henderson: Find the said respondent Handyside and Henderson liable to the appellants in the expenses of the action of multiplepoinding in the Inferior Court, both before and after conjunction: Find the said respondents Handyside and Henderson liable to the appellants in the expenses in this Court: Allow accounts of the said expenses now found due to be given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for the Pursuer—Solicitor-General (Watson) Q.C. and Asher. Agents—J. W. & J. Mackenzie, W.S.

Counsel for the Defender—Dean of Faculty (Clark) Q.C., and Balfour. Agents—Hamilton Kinnear, & Beatson, W.S.

Wednesday, January 20.

SECOND DIVISION.

[Lord Young, Ordinary

PEEBLES & SON AND MANDATORY *v.* CALEDONIAN RAILWAY COMPANY.

Railway Clauses Act, 1845, *sec.* 90—*General Lien—Tolls—Agreement.*

B, a paper maker at Bridge of Allan, consigned certain bundles of paper addressed to A, his agent in London, and drew two bills against the consignment, which were accepted by A. The practice was for B to pay directly to the Railway Company (with whom by arrangement he ran an account payable monthly) the carriage to Grangemouth. The goods were detained by the Railway Company at Bridge of Allan in security of a general balance due by B for previous carriages. In an action at the instance of A for delivery of