even though there may be a consensus of medical opinion in favour of the operation proposed as the proper and probably successful treatment—I mean a consensus of opinion among the doctors examined by the Sheriff. I think it must always remain a question, as the Sheriff himself seems to think it does, whether for his own advantage or comfort the patient will elect to suffer an important operation, or whether he prefers to endure the discomfort which arises from leaving the operation unperformed, and I should certainly hesitate very much to say that anybody can be compelled to decide that question in one way or other irrespective of his own feelings. But then I think the other reason which has been stated, and especially by Lord M'Laren, is extremely material in this case, and it was this—we cannot take into account any evidence, whether documentary or oral, of facts which are not set forth in this special case. But I think it is quite consistent with our rule that we should pay proper attention to admissions of facts made by counsel at the bar, and that it would be an injustice if, when a fact is alleged by counsel on one side and properly admitted by counsel on the other, we should refuse to consider it merely because it has not been brought within the special case in a really formal manner. Now, counsel have agreed that although the doctors on whose opinion the Sheriff relies, and who I have no doubt we must assume were men of perfectly competent skill and experience, advised the operation, the doctor who had treated the man in the Infirmary, and advised him personally afterwards, was of a contrary opinion, and said the operation should not be performed, and advised his patient against undergoing it, and I am quite unable to say that when the man acted on the advice of Professor Annandale, though it was contrary to the opinions of other doctors, he was acting in a way in which no reasonable man would have acted in view of his advantage and comfort. But the only other way that I regard that statement is that even if we were not to proceed on it as matter of fact it is an exceedingly valuable illustration of the first argument on the question whether the Sheriff's statement of fact is conclusive against the reasonableness of the conduct of this man, because there is nothing in what the Sheriff says which is inconsistent with the statement made at the bar about Professor Annandale's opinion, and that shows that all these things that the Sheriff states may be predicated with reference to a particular case, and yet that a most eminent surgeon may have a different opinion and advise that no operation should be performed. And I think that is a perfectly sufficient reason for rejecting those statements as being in themselves conclusive to show that a man is not suffering from an injury caused by accident, but is suffering only from the consequences of his own unreasonable conduct—because that is really the point at issue in a question of this kind. If a man is suffering from an accident he is entitled to compensation. If you can show that he is not suffering from an accident, but that he is suffering only in consequence of his own unreasonable conduct, he is not entitled to compensation, but I do not think that is shown in this case by the findings of the learned Sheriff.

The Court pronounced this interlocutor—

"Find in answer to the question in the case that by his refusal to undergo the operation referred to in the case the appellant has not precluded himself from insisting further in his application, and decern."

Counsel for the Appellant—Watt, K.C.—Munro. Agents—St Clair Swanson & Manson, W.S.

Counsel for the Respondents—Campbell, K.C.—Hunter. Agents—W. & J. Burness, W.S.

Tuesday, June 23.

FIRST DIVISION.

[Sheriff Court of the Lothians at Edinburgh.

THE PUMPHERSTON OIL COMPANY, LIMITED *v.* CAVANEY.

Master and Servant—Workmen's Compensation Act 1897, *Schedule I., sec.* 12—*Review of Weekly Payments.*

Held (*diss.* Lord M'Laren) that in an application for review of a weekly payment under the Workmen's Compensation Act 1897 the applicant is not entitled to have the weekly payments reviewed as from any date prior to the date of the arbitrator's award in the application for review.

Section 12 of the first schedule of the Workmen's Compensation Act 1897 enacts—"Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall in default of agreement be settled by arbitration under this Act."

This was an appeal in an arbitration under the Workmen's Compensation Act 1897, between the Pumpherston Oil Company, Limited, appellants, and John Cavaney, pithead labourer, West Calder, claimant and respondent.

The case stated by the Sheriff-Substitute (HENDERSON) was as follows:—"On 31st October 1901 the respondent met with an injury to his left hand at appellants' works, which totally incapacitated him from earning wages. His average weekly wages for the twelve months prior to that date were 38s., and the appellants paid him 19s. per week until 28th March 1902, when they ceased making payments on the ground that he was from that date fitted to return to work. The appellants agreed to pay the respondent 19s. per week as compensation, and a memorandum of this agreement was

lodged on behalf of the respondent on 8th July 1902, and was recorded on 21st July. On 25th July appellants lodged an application to have the weekly payment reviewed or ended or reduced from and after such date as the Court might appoint. The respondent's total incapacity ceased on 7th May 1902, and from 8th May 1902 to the date of the proof (19th November 1902) he has been working, and during that period has been earning 23s. a-week as a pithead labourer. His earning capacity has been considerably diminished, and he is, at all events at present, unable to follow his former occupation as a drawer. By interlocutor dated 26th December 1902 I found respondent entitled to continued compensation, fixed the same at 8s. per week, and to the extent of 11s. per week diminished the weekly payments payable under the recorded memorandum of agreement, and that from the date of my said interlocutor (26th December 1902), holding that I was not entitled or empowerd by the said Act to review any weekly payment as at or from any period of time prior to the date of the judgment in the application for review."

The questions of law for the opinion of the Court were:—"(1) Are the appellants, under section 12 of the first schedule of the Act, entitled to have respondent's rate of compensation reviewed as from 8th May 1902—it having been proved that respondent's total incapacity did not extend beyond that date, and that from and after that date the respondent has earned 23s. a-week—his average weekly earnings before the accident having been 38s. per week? (2) If not, are the appellants entitled to review as from 25th July 1902, the date of their application for review?"

Argued for the appellants—A workman's right to weekly payments, under the Act, Schedule I., sec. 1, sub-sec. B, was to continue only "during the incapacity" resulting from the injury. That being so, the question was, "When did the incapacity cease?" and the award of the arbitrator, like the judgment of a judge in any other cause, drew back, and had reference to, the state of facts when the application for review was instituted. In the present case the Sheriff stated as a fact that the workman's total incapacity ceased on 7th May 1902, and the application for review was not lodged until 25th July 1902. It was not contended that an employer would have a *condictio indebiti* for sums paid to the workman, but that the workman's right to weekly payments was subject to a condition, viz., continuing incapacity, and the purpose of an application for review was to ascertain whether and up till when this condition was fulfilled—*Cammick* v. *Glasgow Iron and Steel Company*, November 26, 1901, 4 F. 198, 39 S.L.R. 138. The decision of the Court of Appeal in *Morton & Company* v. *Woodward* [1902], 2 K.B. 276, was entirely in favour of the appellants' contention, and it would be unfortunate if the law on this matter was determined differently in Scotland, and unjust to employers who might in that event, owing to the congestion of business and delay in sheriff courts, have to go on paying compensation for months after the workman's incapacity had ceased.

Argued for the respondent—The employer had no right at his own hand to discontinue the weekly payments. The only legal methods of bringing the payments to an end or of diminishing them were those prescribed by sections 11 and 12 of the first schedule of the Act. Then the sections must be read together, and so read formed a consistent scheme. Apart from "refusal or obstruction" by the workman, it was not contemplated that his right, under the memorandum of agreement or otherwise, should be suspended until his physical condition was ascertained, as under section 12 it could only be ascertained by the award of the arbitrator. The recorded memorandum of agreement stood, and was enforceable until it was reduced by the new award in the application for review. The decision in *Steel* v. *Oakbank Oil Company*, December 16, 1902, 40 S.L.R. 205, was directly applicable to the present case. If an award was retroactive in its effect and the payments had been meantime made by the employer, it could be made effectual only by a *condictio indebiti* of payments which were alimentary.

At advising—

LORD PRESIDENT—On 31st October 1901 the respondent sustained an injury to his left hand at the appellants' works, which for the time totally incapacitated him from earning wages. His average weekly wages for the twelve months prior to the date of the accident were 38s., and the appellants paid to him 19s. per week until 28th March 1902, when they ceased to make payments, alleging that he was from that date able to resume work. The appellants agreed to pay to the respondent 19s. per week as compensation, and a memorandum of this agreement was lodged on behalf of the respondent on 18th and was recorded on 21st July 1902. On 25th July the appellants lodged an application to have the weekly payment reviewed, and ended or reduced, from and after such date as the Court might appoint.

The Sheriff states as a fact that the respondent's total incapacity ceased on 7th May 1902, and that from 8th May 1902 to the date of the proof (19th November of that year) he had been working, and during that period had been earning 23s. a-week as a pithead labourer. The Sheriff, however, also finds that his earning capacity had been considerably diminished, and that he was, at all events at the date of stating the case, unable to follow his former occupation as a drawer. By interlocutor dated 26th December 1902 the Sheriff found the respondent entitled to have payment of compensation at the rate of 8s. a-week made to him, and he to the extent of 11s. a-week diminished the weekly payments payable under the recorded memorandum of agreement, and that from the date of the interlocutor of 26th December 1902, holding that

he was not entitled or empowered by the Act to review any of the weekly payments as at and from any period prior to the date of the judgment in the application for review.

Upon these facts the following questions of law were stated for the opinion of the Court—(1) Are the appellants, under section 12 of the first schedule to the Act, entitled to have the respondent's rate of compensation reviewed as from 8th May 1902, it having been proved that the respondent's total incapacity did not extend beyond that date, and that from that date the respondent had earned 23s. a-week—his average weekly earnings before the accident having been 38s. a-week? (2) If not, are the appellants entitled to review as from 25th July 1902, the date of their application for review?

An important general question is thus raised for decision, and it is a question on which conflicting judgments have been pronounced—by the Court of Appeal in England in the case of *Morton & Company, Limited* v. *Woodward*, 1902, 2 K.B. 276, and the Second Division of this Court (by a majority) in the case of *Steel* v. *Oakbank Oil Company, Limited*, 40 S.L.R. 205.

Upon a careful consideration of these judgments and of the arguments submitted to us I am of opinion that the view taken by the majority of the Judges of the Second Division is the correct one.

By Schedule I., section 12, of the Act of 1897, it is provided that "Any weekly payment may be reviewed at the request either of the employer or of the workman, and, on such review, may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act." It is not stated at or from what time the ending, diminution, or increase of the weekly payments is to be made, but it appears to me that upon a sound construction of the section it cannot be assumed to have been intended that the review should take effect at any time prior to the judgment upon the application. I do not think it would be consistent with the general policy of the statute that the employer should have the power to stop such alimentary payments at his own hand, and if he is not entitled so to stop them prior to a judgment being pronounced upon his application, he must be bound to go on making them to the workman, and the workman is *prima facie* entitled, if he believes that the application of the employer is not well-founded, to continue to apply the payments to his maintenance. The schedule contains no provision for suspending or stopping the payments pending a trial of the question, and probably it was not contemplated that the proceedings might be of a prolonged character. But as there is no provision for stopping the payments pending the consideration of the application, the workman, in my judgment, is entitled to receive and spend them, and I do not think it would be consistent with the terms of the Act to hold that a claim for repayment should lie at the instance of the employer against the workman of the sums which had been paid to him under a standing order between the time at which it might ultimately be ascertained that his incapacity had ceased and the date of the decision under section 12 that they should be stopped. And if it was not contemplated that there should be a claim at the instance of the employer against the workman for payments made after the date at which it might ultimately be found that his incapacity had ceased, I think it would follow that the employer could not at his own hand withhold the payments between the date of the application for review and the date of the judgment upon it. In short, it appears to me that the intention of the Act must have been that the award of compensation should be operative until it is terminated or modified by a decision under section 12 of the schedule.

For these reasons I am of opinion that the judgment of the sheriff is right.

I may add that it was probably thought by the Legislature unnecessary to make any provision in the statute as to the time at which the right to compensation should terminate, because it was assumed that such applications would be dealt with summarily, or at all events that no long period would intervene between the application for review of the payments and a decision upon it. Apparently, however, several months do sometimes elapse between the application and the decision, no doubt owing to the sheriffs being engaged with other business. I think it is deserving of consideration whether some arrangement could not be made in sheriff courts for a speedy disposal of applications of this class, such as was evidently contemplated by the Act.

Lord Adam—I remain of the opinion I expressed in the case of *Steel*, and I desire to add a few words in this case.

It appears that on the 31st October 1901 the respondent met with an injury which totally incapacitated him from earning wages. The appellants agreed to pay him on that footing 19s. a-week, being one-half of the amount of the wages he had previously been earning, and that agreement was duly recorded.

After some time the appellants came to think, and rightly as appears from the arbiter's judgment, that his total incapacity had ceased, and although his partial incapacity had not ceased on 28th March 1892, they stopped making any further payments to him.

There are two ways under the Act by which a weekly payment, whether fixed by award or as in this case by agreement, may be reviewed, either under the 11th sub-section of the first schedule or under the 12th.

The 12th sub-section enacts that any weekly payment may be reviewed at the request either of the employer or the workman, and on such review may be ended, diminished, or increased.

From that I infer that a weekly payment

fixed by award or agreement, is to exist and to be implemented until it is ended, diminished, or increased on review, and when, therefore, the appellants took the matter into their own hands, and on 28th March 1902 ceased to pay the respondent the weekly payment fixed by agreement, they acted in my opinion quite illegally and unwarrantably.

On the 25th July, however, the appellants did make application under the 12th sub-section to have the weekly payment reviewed.

Now what is the object of the review? It is to determine whether the existing weekly payment shall be ended, diminished or increased, and to obtain a new award which shall regulate that matter for the future.

I think the question which the arbiter has to consider in this and in similar cases is just the same as when a case is originally brought before him, namely—what is the amount of the weekly payment which ought to be awarded to the workman, having regard to his condition at the time.

In my view it is quite irrelevant to inquire at what previous date total incapacity may have ceased and partial incapacity supervened.

When the Act says that an existing weekly payment may be ended, diminished or increased on review, that surely means when it is in fact reviewed, and a new award superseding the old one is pronounced. In my view, accordingly, it is the new award which brings the previously existing award to an end. If this be so then it would appear that no earlier date than the date of the award can be fixed as that from which the new weekly payments are to run, because, presumably, the workman has been paid, as I think he is entitled to be paid, up to that date. As your Lordship has pointed out, the weekly payments with which we are concerned are required for the maintenance of the injured workman, and are presumably consumed from day to day. But if an earlier date than the date of the new award were fixed as the date from which the diminished payments were to run, I do not see how the award is to be made effectual except by an action for repetition of the overpayments which in that case would have been made, or by the retention of the future payments until the prior over-payments shall have been extinguished. But I cannot think that the legislature contemplated any such procedure as that. No doubt the case would be different if it were to be held that the mere presentation of an application for review were to operate as a suspension of the existing award and to entitle the employer to cease the weekly payments. But I see no warrant for that in the Act, for it does not appear to me that an application for review is in any sense equivalent to an ending of the existing award on review, which as I have said is the only statutory way of terminating an existing award.

If I may be allowed to make a remark on the judgment in the case of *Morton*, there would have been no funds on which it could have operated had it not been for as I think the illegal retention by the employer of the weekly payments due to the workman, and so also it would have been in the case of *Steel* had the judgment been the other way.

I concur with your Lordship as to the delay which has taken place in deciding this case. These cases should be decided quickly and in the most summary manner, and I think the Sheriffs should consider whether they could not so arrange their business as to bring that result about.

LORD M'LAREN—I regret to say that I am unable to concur in the ground of judgment. Under other circumstances I might have assented to the judgment proposed in deference to the previous decision of the same question by the Second Division of the Court. But when it is considered that the decision was that of two judges to one, and that there is a contrary decision by the Court of Appeal in England, it is perhaps desirable that I should state my reasons for differing with your Lordships.

The measure of the employers' liability to an injured workman is given by the first Schedule of the Workmen's Compensation Act, 1, (*b*), in these terms, "where total or partial incapacity for work results from the injury a weekly payment *during the incapacity* after the second week not exceeding fifty per cent. of his average weekly earnings," etc. Supposing the Act of Parliament to be self-consistent, then unless this provision is elsewhere qualified the right to a weekly payment begins and ends with the incapacity of the workman; there is no obligation to continue the payment after the incapacity has ceased, and in case of a difference between the master and workman the only question for inquiry would be, when did the incapacity cease? So far, I take leave to say, that the meaning of the Act of Parliament is perfectly clear, and it lies with those who say that the right to a weekly payment continues until the date of decree to show that this provision has been varied by other provisions of the schedule to the Act. The only provision founded on is the twelfth section of the schedule, which is in these terms—"Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminshed, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act." I think it is clear that "review" in the sense of this section means a variation of the employers' liability to be attained if possible by agreement, or failing agreement then by arbitration under the conditions of the Act. The question we are now considering would not arise if the parties were agreed, because if the request to review the allowance in a certain way were assented to, then the extinction, diminution, or increase of the weekly allowance would take immediate effect, and there would be no allowance beyond what is contemplated in the first section of the schedule, head (*b*).

The question however does arise when in default of agreement the claim has to be settled by a sheriff or county court judge as arbitrator, because it is not according to the duty of these judges that all other business should be laid aside in order that precedence should be given to references under the Workmen's Compensation Act. As a matter of fact we find that in England as well as in Scotland an interval of from two to three months (six months in the present case) may elapse between the application for review and the arbitrator's award. The effect of the judgment to be pronounced will be that whenever a workman who is convalescent chooses to dispute the employers' application to have the allowance discontinued, he will be able to draw an allowance to which he has no right for the whole period of the duration of the arbitration. It is said that he is entitled to this because the twelfth section says that the allowance may be ended or diminished "on review." This seems to me to be putting more weight upon a preposition than it was intended to bear. No doubt the ending of the allowance is conditional on the exercise of the power of review, just as the exercise of all other disputed rights is conditional on the determination of the dispute by agreement or judicial decision. But in every court of the kingdom the effect of the decree or judgment when given draws back to the date of the commencement of the action or suit, because the question which the Court considers always is, what were the rights of the parties when the action was instituted. I am not here considering the case of new matter emerging in the course of the action, because there is nothing of the kind in the present case, and I should be the last to dispute that the arbitrator is entitled to consider the case of a relapse or it might be a recovery emerging in the course of the proceedings. But in the present case it is found as a matter of fact that the workman had partially recovered prior to the commencement of the arbitration, and there has been no supervening change of circumstances. It is, in my opinion, not a material consideration that his convalescence was not judicially declared until the end of the arbitration, because the workman must have known that he was convalescent, and it was according to his duty that he should acquiesce in the diminution of the allowance. According to the second section of the schedule he is only entitled to an allowance "during incapacity," and if he is entitled to further payment until that incapacity is declared to be ended or diminished it will be the only case that I know of in which the law enables a party to profit by his own wrong. I may add that if the effect of an application of this nature is the same as the effect of an original application the judgment proposed would not be right, because in an original application the judgment draws back to the commencement of the proceedings, viz., to a fortnight after the date of the accident.

LORD KINNEAR—I agree with the Lord President and Lord Adam. There can of course be no question that the compensation to be paid to an injured workman, where total or partial incapacity results from an injury, is a weekly payment during the incapacity, and it is a necessary result of the enactment which so determined the compensation that the weekly payment is to continue to operate so long as the incapacity continues. I agree with Lord M'Laren that that is a fair inference from section 1, sub-section (*b*) of the first schedule. But then that suggests the question which has actually arisen in this case—whether convalescence is *ipso facto* to determine the right to the weekly compensation, or whether any future procedure may not be necessary in order to bring the force of the order to an end. Now I think that is a question which we are not left to decide on general principles, and I have been unable myself to derive any light upon it from consideration of the general rules which regulate the effect of decrees in ordinary actions where a decree certainly may, if not universally at all events very often, draw back to the date of the right which is formulated in the summons. The effect of a decree in such actions must of course always be determined by the conclusion of the summons. But procedure under the Workmen's Compensation Act is not ordinary litigation, or indeed litigation at all. The right given to the workman is a new and statutory right to be expiscated by arbitration and not by an action at law, and we must consider what the statute says with reference to the way in which it may be determined or modified. Now we were told by Mr Salvesen, speaking as he told us from his agents' experience of many thousand arbitrations, that in the great majority of cases it was not found necessary to resort to any procedure under the statute, because when the employer found that his workman was convalescent he was in the habit of intimating that the compensation was to stop, and the workman in the general case being reasonable, and the employers' intimation not unreasonable, both parties agreed that compensation might be stopped or be diminished, and the workman was content to go back to his work. It is very satisfactory to learn that in so large a number of cases masters and workmen can settle a question of this kind without going to the sheriff for arbitration, and I do not see how a correct ascertainment of the legal rights of parties under the statute should be in any way calculated to interfere with that satisfactory course of practice. But then if matters are not settled in this way by a reasonable agreement, and there may of course be many cases in which a failure to settle does not arise from any unreasonable conduct on either side, because people may differ in regard to the state of a man's health as well as in other matters. If it is necessary to proceed otherwise than by agreement the statute makes two provisions which seem to me to be perfectly clear, and I do not think that the true effect and meaning of either of them can be exactly ascertained without taking the other into account—I

mean the two provisions of sections 11 and 12 in the first schedule. The 11th section provides for the very case which we are considering—the case where any workman actually receiving weekly payments under this Act may be thought by his employer to be convalescent and therefore no longer entitled to them—and it says that such workman shall, if so required by his employer, submit himself for examination by a duly qualified medical practitioner, provided and paid by the employer, or if he objects to be examined by such medical practitioner, then he may submit himself for examination to one of the medical practitioners appointed for the purposes of this Act by the Secretary for Scotland, for the purpose of ascertaining what the man's actual condition really is. Now that is the first step, or may be the first step, if an employer chooses to take it, to ascertain whether the compensation is to go on, and then section 11 proceeds to enact that when a workman is asked to submit himself to an examination in this way if he refuses "to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place." Now, that appears to me quite plainly to imply that the right is not suspended or touched in any way unless the workman is obstructive and refuses to submit to examination. If he does then his right is suspended. If he is not obstructive, but consents to be examined by a medical man and to have his bodily condition ascertained, then his weekly payment is to go on although it may afterwards turn out that he was in a better condition at the time when the examination was proposed to him than he had been since his weekly compensation was originally fixed. And I think if section 11 is read along with section 12, the two taken together provide a perfectly consistent and complete scheme. If the employer obtains his certificate under section 11, he will be entitled to a review under section 12 on the basis so established, and if he takes his procedure under the 12th section without calling into aid the procedure under section 11, the medical facts must be ascertained in some other way. But in that case there is no provision for suspending the weekly payment. It is not provided that the weekly payment shall in that case be suspended at all, and therefore when these two sections are taken together the Act says that, in the first place, if the workman is obstructing and will not let a proper examination be carried out his right to the weekly payment shall be suspended until he does consent to examination. If he is not obstructive, then the amount of his weekly payment shall be reconsidered, and on review—which I take to mean as the result of such consideration—be altered, diminished, or increased as the case may be. As to this last case I am unable to see or infer from anything in the statute that there is any power given to the employer to suspend payment, and certainly there is even less to stop it altogether. I entirely agree with and am much impressed by an observation made by Lord Adam, that if it is to be held that the new award which is to be substituted for the original award is to run from the date when an application is made, there can be no fund under the control of the Court on which such a decree can operate in so far as regards the period that has elapsed between the date of the application and the date of the decision, because it was conceded—and I think the concession was one which could not be withheld—by Mr Hunter in opening the case that if the employer had not withheld the payment of the compensation, but had paid the payments week by week as they became due, he could have no *condictio indebiti* to recover them. Therefore it appears to me that the whole scheme of the Act works out perfectly when one reads the provisions together and finds that the Legislature has provided for the review of any award of compensation when changed circumstances render it proper that it should be reconsidered, that a workman who has once got an order for compensation must submit to the examination which may be necessary for that purpose, that if he is obstructive his right to weekly payments may be suspended, but that if he is not obstructive there is nothing to prevent his putting his order in force until it is displaced by a new order upon review.

The Court answered both questions in the case in the negative.

Counsel for the Appellants — Salvesen, K.C.—Hunter. Agents—W. & J. Burness, W.S.

Counsel for the Respondent—C. N. Johnston, K.C. — M'Robert. Agent — J. Ross Smith, S.S.C.

Wednesday, June 24.

FIRST DIVISION.

MAGISTRATES OF INVERNESS *v.* D. CAMERON & COMPANY.

Burgh—Petty Customs—Liability of Consignees—Goods Conveyed to Consignees in Burgh by Railway—Practice to Render Monthly Accounts to Consignees for Sums Due in respect of Petty Customs—Abatements and Exemptions—Ultra Vires—Inverness Burgh Act 1847, *sec.* 142, *and Schedule A.*

Held that under the Inverness Burgh Act 1847, section 142, and Schedule A annexed thereto, quoted *infra*, the Magistrates of Inverness (1) were entitled to demand from consignees within the royal burgh of Inverness petty customs on goods consigned to the latter but conveyed into the royalty and delivered to them by the Highland Railway Company, whether the goods had been consigned without any stipulation as to payment of the carriage or had been sent carriage paid; and to levy petty customs on articles, *e.g.*, soap, coffee, brushes, &c., not expressly men-