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

(Signed) "TURNBULL, SALVESEN, & Co."

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

CLARK and A. MONCRIEFF for pursuers.

FRASER and SCOTT for defenders.

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

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

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

Saturday—Wednesday, April 4-8.

(Before Lord Ormidale.)

LONDON STEAM COLLIER AND COAL CO. *v.* WINGATE & CO.

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

In this case the London Steam Collier and Coal Company (Limited), incorporated under the Companies Act 1862, and William Miller, S.S.C., their mandatory, were pursuers, and Thomas Wingate & Co., shipbuilders near Glasgow, were defenders. The action arose in this way. Upon the 3d January 1866, the defenders offered to build two steam colliers for the pursuers for £20,000. The pursuers said that the builders guaranteed that each vessel should be capable of carrying 700 tons of cargo, in addition to all requisite stores, including 25 tons of bunker coal, on a draught of water not exceeding 13 feet, and, when so loaded, the vessel to make under steam eight and a half knots per hour. On the delivery of the vessels, according to the allegation of the pursuers, it was found that one of the vessels—the *Ludworth*—was deficient to the extent of 36 tons, and the other, the *Thornley*, to the extent of 21 tons, giving 45 cubic feet per ton. The pursuers also maintained that the two vessels were not able to carry their holds full of coal at 45 feet per ton without trimming so much by the head as not to be seaworthy; that in this respect there was a deficiency of 65 tons; and that the business operations of the pursuers had been seriously disturbed by the deficiency in the carrying capacity of the vessels. The defenders maintained that, by the specifications adjusted with the pursuers, and in terms of which the contract was completed by the offer and acceptance libelled on, the exact length, breadth, and depth of the vessels, and also their tonnage measurement, were definitely fixed and determined; that an exact model of the vessels, drawn to a precise scale, was also prepared and approved of. According to the specification forming the basis of the contract libelled on by the pursuers, the two vessels in question were specified to be 170 feet length on keel, 26 feet beam, and 15 feet depth moulded, and to be of the tonnage of 555$\frac{1}{94}$th tons, old builders' measurement; and it was alleged by the defenders that the vessels were constructed of the measurements, tonnage, and capacity required by the contract; that they were in all other respects conform to the provisions of said contract; and that both vessels had been delivered to and retained by the pursuers for the purposes of their trade.

The following issue was sent to the jury:—

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

Damages laid at £10,000.

YOUNG, GIFFORD, and MACLEAN for pursuers.

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

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

Agent for Pursuers—W. Miller, S.S.C.

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

Tuesday—Wednesday, April 7-8.

(Before Lord President.)

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

(*Ante*, p. 172.)

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

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

The following were the issues sent to the jury:—

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

Hertz, raised an action in the Court of Session against the pursuer, as master and part owner of the vessel called the Nayaden, and for himself, and as representing the owners of the said vessel, for payment of £297, 6s. 4d., for alleged short delivery of a cargo of bones, and it being also admitted that the said action was discharged and withdrawn by the defenders:

"1. Whether, on or about 16th May 1867, and in or near the roadstead of St Davids, in the Firth of Forth, the defenders, or others acting by their orders, wrongfully and without legal warrant invaded and took possession of the said vessel, and brought her to the harbour of Inverkeithing, to the loss, injury, and damage of the pursuer?

"2. Whether, on or about the 16th day of May 1867, the defenders maliciously, and without probable cause, arrested the said vessel on the dependence of said action, and caused her to be detained, first in the harbour of Inverkeithing, and thereafter in the harbour of Leith, from said date till 22d June 1867, to the loss, injury, and damage of the pursuer?

"3. Whether, on or about said 16th May 1867, the defenders, or others acting by their orders, did by gross negligence or gross unskilfulness cause the said vessel to strike against the quay at the said harbour of Inverkeithing, and against a coal-spout on said quay, whereby she sustained damage in her hull, rigging, and other parts, to the loss, injury, and damage of the pursuer?

"4. Whether the said harbour of Inverkeithing was an unsafe harbour in which to place the said vessel; and whether the defenders, or others acting by their orders, did by gross negligence or gross unskilfulness cause the said vessel to be placed in said harbour on or about said 16th May 1867, and detained therein from said date till on or about the 8th June 1867, whereby she suffered damage in her hull, rigging, and other parts, to the loss, injury, and damage of the pursuer?"

Damages laid as follows:—

Under first issue, . .	£200
Under second issue, . .	350
Under third issue, . .	500
Under fourth issue, . .	550

Dean of Faculty and Scott for pursuers.

Clark and Thomson for defenders.

The jury, after an hour's absence, returned a verdict for the pursuer on all the four issues, assessing the damages as follows:—

Under first issue, . . .	£100
Under second issue, . . .	200
Under third issue, . . .	5
Under fourth issue, . . .	215
Total damages, . .	£520

Agent for Pursuers—A Duncan, S.S.C.

Agent for Defenders—John Ross, S.S.C.

HOUSE OF LORDS.

Tuesday, March 10.

MACFARLANE & CO. *v.* TAYLOR & CO.

(*Ante*, vol. iv, 33, iii, 151.)

Issue—Construction—Direction to Jury—Bill of Exceptions—Mercantile Law Amendment Act. In an action of damages for breach of contract, objections to form of issue *repelled*, and bill of exceptions to directions of presiding judge *disallowed*.

This was an appeal against two interlocutors of the First Division of the Court of Session, in an action of damages for alleged breach of contract at the instance of the respondents against the appellants, viz.: (1) an interlocutor settling the terms of the issue; and (2) an interlocutor disallowing a bill of exceptions for the appellants, and finding them liable in expenses.

Issues were adjusted in March 1866. The case was tried in the beginning of January 1867, when the jury unanimously returned a verdict for the respondents, and assessed the damages at £3000. A bill of exceptions was presented by the appellants, who also moved for and obtained a rule on the respondents to show cause why the verdict should not be set aside as contrary to evidence. The Court unanimously, on 24th May 1867, disallowed the exceptions and discharged the rule.

This appeal was then presented.

Anderson, Q.C., Mellish, Q.C., and J. M'Laren for appellants.

Sir Roundell Palmer, Young, and Will for respondents.

Lord Chancellor—My Lords, the merits of this appeal were very fully and clearly laid before your Lordships yesterday by the learned counsel for the appellants, and after the consideration which your Lordships have been able to give to the case, I venture to think that you will concur with me in the opinion that it is unnecessary for us to call upon the counsel for the respondents.

My Lords, the facts of the appeal which require to be adverted to lie in an extremely small compass. The respondents here, who were the pursuers in the Court of Session, are the firm of Taylor & Co., merchants at Leith, who carry on trade with the West Coast of Africa. The defenders in the Court of Session, who are the appellants here, are the firm of Macfarlane & Co., who are distillers or rectifiers at Port-Dundas, Glasgow,

My Lords, the pursuers stood in need of a certain quantity of spirits for the purposes of their trade with the West Coast of Africa, that is to say for the purpose of bartering with the natives in exchange for the productions of the country. They applied to the appellants Messieurs Macfarlane and Company, and entered into a contract with them (the terms of which I shall have afterwards to advert to) for the supply of those spirits. So far as regards quantity, the spirits which were ordered were supplied, and a bill of exchange was drawn for the purchase money, accepted by the pursuers, and paid at maturity. And there my Lords the case would have ended but for this, that when the spirits reached the coast of Africa, and were used for the purposes of barter there, they were found, as the pursuers allege, to be unmerchantable in their quality. And consequently an action was brought against the appellants, Messieurs Macfarlane and Company, by Messieurs Taylor and Company, for damages in respect of the quality of the spirits.

My Lords, in that action the record was closed in the usual way, and the parties not being able to agree upon the form of an issue, an issue was settled by the Inner Division of the Court of Session, and went to trial. That trial occupied several days, and in the result the jury found a verdict for the