I think they may, because these are the persons who, in the sense of the statute and in the sense of ordinary language, have brought the goods into the burgh. The tax is to be levied on goods brought into the burgh, and if a tradesman in the burgh orders goods to be sent to him by railway, and he takes delivery of these goods, then it appears to me that he is the person who has brought the goods into the burgh and is liable for the tax. It is quite true that under the older customary law the right of magistrates to levy petty customs was much more limited, because they could stop the goods on entering the burgh and recover payment from the carrier if they could, or keep the goods out of the burgh. That was their only remedy. But it is because it was a very insufficient remedy that this statute, in addition to defining more clearly the right of taxation given to the burgh, sets out that the methods of collecting the rates are to be improved, and the great improvement which it introduces for the purpose of facilitating the collection is that the Magistrates may bring an action in the Sheriff Court. It appears to me in the first place that that action may very properly be brought against the consignees within the burgh who have ordered the goods and taken delivery of them. On the other hand, it can hardly have been intended to be brought against the consignors, who are not within the jurisdiction of the Sheriff Court of Inverness at all. If a consignee chooses to make arrangements that the consignors are to pay the tax, then I agree that that is a matter with which the Magistrates have no concern, and they are entitled to accept the money from the person who is ready to pay it if the tax is duly accounted for. On the whole matter, therefore, subject to difference on the minor question as to the custom leviable on less quantity than barrel-bulk, I agree with the way in which your Lordships propose to answer the questions.

LORD ADAM was absent.

The Court pronounced this interlocutor:—

"Answer the first question in the affirmative, whether the goods have been (*a*) consigned to the second parties without any stipulation as to payment of carriage, or (*b*) consigned "carriage paid": Answer the second question in the negative, and the third and fourth questions in the affirmative: In respect of the previous answers find it unnecessary to answer the fifth question: Answer the sixth question in the negative; and in answer to the seventh question say that the first parties are entitled to exact from the second parties the full schedule rates specified in the account mentioned in the case, but that they are not entitled under the Inverness Burgh Act 1847 to levy petty customs at any other rates than those specified in the schedule to the Act, without prejudice to the right of the first parties in their discretion to allow discounts or rebates on the said schedule rates in respect of prompt payments, provided always that they grant equal treatment in this respect to all persons or classes of persons liable in payment of petty customs, and decern: Find no expenses due to or by either of the parties to the case."

Counsel for the Provost and Magistrates of Inverness (the First Parties)—Clyde, K.C. — M'Lennan — Murray. Agents — Forbes, Dallas, & Company, W.S.

Counsel for D. Cameron & Company (the Second Parties) — Dundas, K.C. — Blackburn. Agents—Dundas & Wilson, C.S.

Wednesday, June 24.

SECOND DIVISION.

TAYLOR'S TRUSTEE *v.* CHRISTAL.

Succession—Vesting—Direction to Divide among Children on Youngest Child Attaining Twenty-five—Children of Any Predecessor Taking their Parent's Share—Vesting a morte testatoris.

By a codicil a testator recalled the purposes of his settlement containing his directions as to the disposal of the residue, "and in their lieu and place" he directed his trustees to pay the whole income arising from the residue of his estate to his wife until his youngest child should attain the age of twenty-five, upon which event he directed them "to divide the whole residue among my children equally, the children of any predecessor taking their parent's share." The codicil contained provisions for the maintenance of certain of the testator's children by his widow up to the period of division, or by his trustees in the event of her predeceasing that period. It contained no provision as to accretion. By the purposes of the settlement which were recalled the testator had directed his trustees (1) to pay the income to his children, with a provision for accretion in the event of children dying without issue, and a provision in favour of issue of children dying leaving issue; and (2) on the death of the last survivor of his children to pay the fee to the testator's grandchildren who survived that date, *per stirpes*. *Held* that under the provisions of the codicil one of the testator's children, who survived him but predeceased the period of division, had a vested right in a share of the residue *a morte testatoris*.

Robert Christal, painter, Kirkcudbright, died in 1884, survived by his wife and by five children, and leaving a trust-disposition and settlement, dated 1st March 1878, and relative codicils.

By one of the codicils, dated 18th April 1884, the testator provided as follows:—"I, Robert Christal, designed in the foregoing trust-disposition and settlement, do hereby revoke and recal the fifth

and sixth purposes thereof, and in their lieu and place I direct and appoint my trustees to pay the whole interest, dividends, and annual profits arising from the residue of my estate to my wife till my youngest child shall attain the age of twenty-five years complete, with the recommendation that she shall maintain, educate, and clothe [his two youngest children], and on my youngest child attaining said age, I direct and appoint my trustees to divide the whole residue among my children equally, the children of any predecessor taking their parent's share; and in the event of my said wife dying before said period of division, I direct my trustees to use the said annual interests, dividends, and rents in maintaining, educating, and clothing my said two children till said period shall arrive; and further, in the event of my daughter [an unmarried daughter] requiring assistance, I direct my trustees to pay her out of the annual income sufficient for her maintenance, and that even during my said wife's lifetime."

By the purposes of the trust-disposition and settlement which were revoked by this codicil the testator had provided as follows, viz.—"(Fifthly) With regard to the residue of my said whole trust estate, I direct my said trustees to pay the annual rents, interests, dividends, or profits arising therefrom to [his children nominatim] and any other child or children procreated or to be procreated of my present marriage, and the survivors of them, equally amongst them, share and share alike, during their lifetimes respectively, and to the survivor of them during his or her lifetime . . . declaring that if any of my said children shall predecease me without leaving lawful issue, then the share or shares of the said annual rents, interests, dividends, or profits provided or intended for such child or children shall accresce to the survivors and survivor of them, equally amongst them, share and share alike; providing nevertheless that if any of my children so dying shall have left lawful issue, such issue shall be entitled to such share or shares of the said annual rents, interests, dividends, or profits aforesaid, both original and accrescing, as their deceased parent or parents would have been entitled to if alive, and that until the period for the division of the capital or fee as after mentioned. (Sixthly) Upon the death of the last survivor of my said children, I direct and appoint my said trustees to sell, pay, divide, assign, and convey the whole of the said residue of my said estate and effects to and amongst such of my grandchildren as shall be alive at the date of the death of the party last liferenting the trust estate hereby conveyed, and that equally amongst them *per stirpes*, on the youngest grandchild attaining the age of twenty-one years complete, with full power to my said trustees at any time should they think proper to advance to my said children or grandchildren such part of their share of my said estate as to my said trustees shall seem necessary for their education or advancement in life."

One of the testator's children who survived him was Mrs Margaret Rain Christal or Taylor, who was married to John Taylor, sometime schoolmaster at Portpatrick, Wigtownshire: She died in 1896, leaving no issue, and survived by her husband.

Mr Taylor entered into a second marriage, and died in 1899, survived by his second wife, and leaving a trust-settlement.

By an antenuptial contract of marriage entered into between Mr Taylor and his first wife, in the events which had happened, the parties now entitled to the estate left by Mrs Margaret Rain Christal or Taylor were (1) her next-of-kin, (2) the beneficiaries under Mr Taylor's settlement, and (3) his next-of-kin.

Robert Christal's youngest child, if he survived, would attain twenty-five on 26th March 1904.

Questions arose as to the first Mrs Taylor's rights in her father's estate.

A special case was presented for the opinion and judgment of the Court.

The parties to the special case were—(1) the trustee under Mr Taylor's settlement; (2) his widow; (3) one of his next-of-kin; (4) one of the first Mrs Taylor's next-of-kin; (5) Robert Christal's trustees; and (6) his widow and children.

The first, second, third, and fourth parties contended "that on the death of the said Robert Christal the said Mrs Margaret Rain Christal or Taylor acquired an absolute vested interest under his settlement in one-fifth part of the residue of his estate subject to his widow's rights to the whole income of said estate until his youngest child attained twenty-five years of age; or otherwise acquired a vested interest in said share of his estate subject to defeasance in the event of her leaving issue, and that said vested interest became absolute on her death without issue."

The fifth and sixth parties contended "that no right in her father's estate vested in Mrs Margaret Rain Christal or Taylor, she not having survived the period of division."

The following was the first question of law—"(1) Had the said Mrs Margaret R. Christal or Taylor a vested right in the succession of her father under his said trust-disposition and settlement *a morte testatoris?*"

There were certain other questions of law to which it is not necessary for the purposes of this report to refer.

Argued for the first, second, third, and fourth parties—The rights conferred upon the testator's children by his codicil vested *a morte testatoris—Matheson's Trustees* v. *Matheson's Trustees*, February 2, 1900, 2 F. 656, 37 S.L.R. 409; *White* v. *Gow*, July 11, 1900, 2 F. 1170, 37 S.L.R. 895; *Home's Trustees*, July 14, 1891, 18 R. 1138. The destination to the children of predeceasers was in favour of vesting *a morte testatoris—Jackson, &c.* v. *M'Millan*, March 18, 1876, 3 R. 627, 13 S.L.R. 388. At least vesting took place *a morte testatoris* subject to defeasance, and in Mrs Taylor's case it became absolute on her death without issue—*Snell's Trustees* v. *Morrison, &c.*, November 4,

1875, 4 R. 709; *Earl of Dalhousie's Trustees* v. *Young*, May 24, 1889, 16 R. 681, 26 S.L.R. 525.

Argued for the fifth and sixth parties—There was no gift except in the direction to divide; there was no power to make advances out of capital, and all the indications of intention that could be gathered from the testator's testamentary writings were in favour of postponement of vesting, which accordingly did not take place until his youngest child attained the age of twenty-five—*Adams' Trustees* v. *Carrick*, June 18, 1896, 23 R. 829, 33 S.L.R. 620; *Parlane's Trustees* v. *Parlane*, May 17, 1902, 4 F. 805, 39 S.L.R. 632; *Bryson's Trustees* v. *Clark*, &c., November 26, 1880, 8 R. 142, 18 S.L.R. 103. The destination to the "children of any predecessor" was equivalent to a conditional institution of grandchildren, but if vesting took place *a morte testatoris* the same result would be brought about without these words by the *conditio si sine liberis institutus decesserit*. These words therefore were superfluous except in the view that vesting was postponed—*Bowman* v. *Bowman*, July 25, 1899, 1 F. (H.L.) 69, Lord Watson, at p. 77, 36 S.L.R. 959.

At advising—

LORD JUSTICE-CLERK—The salient points of the codicil, an interpretation of which is sought by the parties to this special case, are that the testator desired (1) the whole proceeds of the residue of his estate to be paid to his wife until his youngest child should attain twenty-five years of age, she being recommended to maintain, educate, and clothe the two youngest, the children of his second marriage, until that event happened; (2) that on the event happening the trustees were to divide the residue among his whole children equally, the children of any predecessor taking the parent's share; (3) that if the wife should die before the youngest child should attain twenty-five years his trustees were to apply the income for the upbringing, educating, and clothing of these two children until that period should arrive. The question is, whether the bequests of fee to the children under this codicil vested *a morte testatoris*, and I am of opinion that they did. It appears to me to be plain that the intention was to make the gift to the children, and that the only purpose of the order to delay actual payment was that he desired to secure the application of the annual proceeds, first, to his wife, giving her the duty of upbringing of the younger children, and second, failing her, while they were still young, to secure its application by trustees for their behoof. The expressions used regarding the case of predecessors relate in my judgment to any beneficiary who might predecease him, in which case he provides that if they have children the children shall take the parent's share. There is nothing in the deed to indicate postponement of the gift, and such postponement is not to be presumed. I think that the first question must be answered in the affirmative.

The LORD JUSTICE-CLERK stated that LORD YOUNG, who was absent at advising, concurred.

LORD TRAYNER—By the trust-settlement of Mr Christal referred to in the case, as originally conceived, the truster destined the residue of his estate to his children in liferent and his grandchildren in fee. But by codicil he altered that, and directed that his wife should have the liferent and his children the fee, and thus gave his children a higher right in the residue than he had originally given. This right of fee conferred on his children was absolute, and would be held to vest *a morte*, unless the contrary was expressed or was clearly deducible from the terms of the settlement. I can find nothing in Mr Christal's settlement which indicates or directs any postponement of vesting.

It was argued that vesting was postponed because the truster had directed that division of his residue should only take place after his youngest child had attained the age of twenty-five. But postponement of division or payment does not *per se* tell against immediate vesting, and especially if the postponement of payment or division can be accounted for otherwise. Now, here I find quite a sufficient reason for the postponement of division in the truster's anxiety to protect the liferent of his wife and the maintenance of his younger children until they reached years of maturity. One of his daughters also seemed to the truster to be in such circumstances that she might require assistance out of the revenue of his estate, and he wished his trustees to be prepared to render such assistance, and directed them to give it if necessary.

The only other provision in the settlement which was founded on as showing that vesting was postponed is that the truster directs the share of a predeceasing child to go to that child's children. I read that, however, as providing for the case of a child predeceasing, not the term of payment or division, but predeceasing the truster himself. I prefer that view to the contrary one, because there is here no clause of survivorship, and if a child had predeceased the truster it might have been held that that child's share fell into intestacy. The destination of the residue to the truster's children being among them "equally," there was no room for accretion to the survivor of a predeceasing child's share. To provide against this the truster directed the share of a child who predeceased him to go to that child's children. But I think it reasonable to infer from the change which the truster made upon his original settlement by the subsequent codicil that he had no intention of preferring grandchildren to his own children, and that he meant his children to have themselves the disposal of their shares if they survived him. Mrs Taylor having survived her father, I think her share vested in her on her father's death. The first question therefore falls to be answered in the affirmative.

LORD MONCREIFF—The first question is whether Mrs Margaret Christal or Taylor had a vested right under her father's settlement *a morte testatoris*. I am of opinion that in the light of or rather by contrast with the fifth and sixth purposes of her father's settlement, for which his codicil of 18th April 1884 was substituted, such a right did vest in her *a morte testatoris*.

In the fifth and sixth purposes we find that the testator's intention is that no right to the capital shall vest in his immediate children, but that upon the death of the last survivor of them it shall vest in his grandchildren, or such as are alive at that date. By the codicil to which I have referred the testator revokes the fifth and sixth purposes of his settlement, and directs his trustees, on his youngest child attaining the age of twenty-five, to divide the residue of his estate among his immediate children, "the children of any predecessor taking their parent's share." The fifth and sixth purposes of the settlement contained provisions as to accretion and survivorship clauses, but in this codicil, which is in marked contrast, while we find trust purposes which necessitate the postponement of payment, there is nothing to indicate postponement of vesting. The income of the capital of the residue was required, according to the provisions of the codicil, for the maintenance of some of the younger children; and accordingly payment was postponed until the youngest should reach the age of twenty-five years, but I see nothing to compel us to hold that in the codicil there is any intention to postpone vesting. I think the contrary is indicated by the total change from the purposes of the settlement to those of the codicil, and that the change of testamentary intention is enough to justify the Court in holding that the words "any predecessor" in the codicil mean any immediate children who may predecease the testator, and not who may predecease the time of payment.

I am therefore of opinion that the first question should be answered in the affirmative.

The Court answered the first question in the affirmative.

Counsel for the First Party—J. R. Christie. Agents—Simpson & Marwick, W.S.

Counsel for the Second Party — Chree. Agents—Oliphant & Murray, W.S.

Counsel for the Third Party — J. B. Young. Agents — Simpson & Marwick, W.S.

Counsel for the Fourth Party—Graham Stewart. Agents—R. R. Simpson & Lawson, W.S.

Counsel for the Fifth and Sixth Parties—Jameson, K.C. — Crole. Agents—Tait & Crichton, W.S.

Saturday, June 27.

SECOND DIVISION.

PEDEN'S TRUSTEE *v.* PEDEN.

Succession — Vesting — Liferent or Fee—Liferent with Power to Test or Appoint among Children.

A testatrix directed her trustees to divide the residue of her estate into five equal portions, and to pay one portion to each of her two sons, and to hold the remaining three portions for her three daughters, "one-third for each, and my trustees shall pay the income of said portions to my said daughters." The testatrix further declared that "while my said daughters shall have no power to obtain payment of the share of my said means and estate to be held for their behoof, they shall have power to legate or bequeath the same in such way as they may see fit, or to appoint the same among such of their children as they may think proper." There was no further provision with regard to the fee of the portions directed to be held for the daughters. *Held* that the three one-fifth portions directed to be held for the daughters did not belong to them respectively in fee, and that they were not entitled to have the same now paid over to them.

Mrs Jane Hogarth or Peden died on 26th September 1885 survived by two sons and three daughters, leaving a trust-disposition and settlement under which she provided with regard to the residue of her estate as follows:—"I direct my trustees to divide the whole of the residue of my means and estate into five equal portions, and to pay one portion thereof to each of my sons, and my trustees shall hold the remaining three portions of my said means and estate for my said three daughters equally between them, one-third for each, and my trustees shall pay the income of said portions to my said daughters. And I declare that the issue of such of my children as may have predeceased leaving issue shall succeed to the share to which their parent would have been entitled if in life: And I further declare that while my said daughters shall have no power to obtain payment of the share of my said means and estate to be held for their behoof, they shall have power to legate or bequeath the same in such way as they may see fit, or to appoint the same among such of their children as they may think proper."

The trustees paid over the two shares falling to the sons and retained the three remaining share in their hands for behoof of the daughters.

In June 1903 the present special case was presented for the opinion and judgment of the Court.

The parties to the special case were (1) the sole surviving trustee under Mrs Peden's settlement, and (2) her three daughters.