

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 labelled 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 labelled 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 555½¹/₄ 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