

statement (reads article 13). Now, up to this point of the record we have nothing beyond this, that Mr Young having a patent for the manufacture of paraffine oil from coal did maintain that that patent gave him the exclusive right of making it from the Torbanehill mineral, and that this representation was against the scientific classification of this mineral, and in that sense, but that sense only, was false. Now, what conclusion is drawn from this? That it had the effect of depreciating the pursuer's mineral in the market. And I daresay it had. There are many indirect effects arising from the granting of letters-patent. So far does this go that many are of opinion that the patent laws are inexpedient. But so long as they exist no patent can be granted without inflicting a certain amount of injury upon others not the patentee; and wherever that is the case there must be an indirect effect produced on the state of the market in regard to raw material. But why any person who maintains that his patent covers a particular thing is to be made responsible for the state of the market, is to me quite unintelligible. I cannot trace the steps of the reasoning. If anybody is to be answerable for it, it may be the Queen or the law of the country. Patents are liable to different constructions; but is a patentee who takes out a patent and works upon it always to do so under the dread that he may at some future time, if it should be discovered that a particular thing is not comprehended within the patent, to be responsible for all the indirect effects that may have been produced upon the state of the market. His Lordship, referring to the mode in which the pursuers make out their claim of damage, quoted and commented upon the 17th and 18th articles of their concordance, and said, in conclusion, that the damage claimed was eminently "consequential" damage, and therefore not recoverable—the effect of the defender's representation on the shale market, from which the damage was said to have resulted, being purely matters of speculation belonging to the domain of political economy and not of law.

The other judges concurred.

The action accordingly was dismissed as irrelevant.

Agents for Pursuers—Morton, Whitehead, & Greig, W.S.

Agent for Defenders—Webster & Sprott, S.S.C.

Saturday, May 19.

FIRST DIVISION.

PATERSON *v.* SOMERS (*ante*, vol. I, p. 256).

Expenses—A pursuer of an action of damages for slander who obtained a farthing of damages from a jury, found entitled to expenses.

WATSON, for the pursuer, moved the Court to apply the verdict of the jury in this case, and in terms thereof to decern against the defender for the sum of one farthing. He also moved for expenses.

J. H. A. MACDONALD, for the defender, opposed the motion for expenses, on the ground that a full retraction had been made on record. He cited *Arrol v. King*, 24th November 1855, 18 D. 98; *Rae v. M'Lay*, 20th November 1852, 15 D. 30; and *Gardener v. M'Kenzie and Others*, 24th June 1846, 8 D. 859.

THE COURT thought there was nothing to take this case out of the general rule. On the contrary, some things occurred in the course of the evidence

especially in the evidence of the person who wrote the article, which showed that clearance by a jury was a proper thing for the pursuer to insist upon.

Agents for Pursuer—Neilson & Cowan, W.S.

Agent for Defender—Thomas Ranken, S.S.C.

WATT *v.* MENZIES (*ante* vol. I, p. 194).

Reparation—Culpa—New Trial. Motion by defender for a new trial on the ground that the verdict was contrary to the evidence *refused*.

This case was tried before Lord Ormidale and a jury on 28th February 1866. The question was whether the pursuer, a widow residing in Glasgow, had received certain personal injuries when being set down from one of the defender's omnibuses in Argyle Street, Glasgow, on 6th June 1865, through the fault of the defender, or those for whom he was responsible. The jury found for the pursuer, and awarded her £50 of damages.

R. V. CAMPBELL (with him the LORD ADVOCATE), for the defender, addressed the Court on Thursday in support of a motion for a rule upon the pursuer to show cause why a new trial should not be granted.

The Court to-day refused the motion. The verdict was not against evidence. The preponderance of evidence seemed to be in favour of the pursuer. There was a competition going on betwixt the defender's omnibus and another, and all the witnesses concurred in saying that the pursuer was allowed to come out of the defender's omnibus when it was in motion, and the guard assisted her to get out. This was wrong. The natural consequence was just what happened, that when suddenly set down, she should stagger for a little and be unable to get out of the way of the other omnibus coming up behind.

Agents for Defender—Hamilton & Kinneair, W.S.

Tuesday, March 20.

OUTER HOUSE.

(Before Lord Ormidale).

THE LORD ADVOCATE *v.* THE EARL OF SEAFIELD.

Salmon Fishings—Prescription. Held (per Lord Ormidale and acquiesced in) that a proprietor with a general clause of fishings in his title, under which he had fished for salmon for more than forty years, had a prescriptive right of salmon fishing.

This is an action at the instance of the Lord Advocate, as representing the Commissioners of Woods and Forests, against the Earl of Seafield; and the conclusions of the action are to have it found and declared that the salmon fishing round the coast of Scotland, and in its bays and estuaries, belong *jure coronae* to the Crown, and form part of its hereditary revenues; and in particular that the salmon fishing *ex adverso* of the Earl of Seafield's lands in the county of Banff, extending along the sea-coast for twenty miles, is part of the patrimonial property of the Crown. It is admitted that Lord Seafield has no express grant of salmon fishings, but he has a general clause of fishings, and he maintains that upon that title he can prescribe a right, and that he has done so by possession for forty years. His Lordship holds his lands under the two baronies of Ogilvie and Bogue, and the fishings during the alleged period have been carried on at three different stations. A proof of possession was allowed, and a long debate