ment of trade labels, the following issues were adjusted:—

"1. Whether, between 1st January 1865 and 23d April 1866, the defender sold certain powders in packets of 2 oz. or thereby, having printed labels thereon made in imitation of the labels used by the pursuer, with the fraudulent purpose of passing off the said powders as the pursuer's manufacture, whereby persons were induced to buy such powders under the belief that they were powders of the pursuer's manufacture, to the loss, injury, and damage of the pursuer?

"2. Whether, between 1st January 1865 and 23d April 1866, the defender sold certain powders in packages, containing twelve packets or thereby, of 2 oz. each or thereby, such packages having printed labels thereon made in imitation of the labels used by the pursuer, with the fraudulent purpose of passing off the said powders as the pursuer's manufacture, whereby persons were induced to buy such powders under the belief that they were powders of the pursuer's manufacture, to the loss, injury, and damage of the pursuer?"

Damages laid at £1000.

The summons, besides the pecuniary conclusions, contained a conclusion for interdict. A motion was made by the pursuer for interim interdict under the conclusion for interdict.

The Lord Ordinary (Jerviswood) refused the motion *in hoc statu*.

The pursuer reclaimed.

The SOLICITOR-GENERAL and SHAND for him argued—There is nothing incompetent in this motion, although it cannot be instructed by precedent that the course proposed has ever been followed in Scotland. There is no reason why interdict should not be granted under an ordinary action as much as in a process in the Bill Chamber. In England the practice is in accordance with the motion of the pursuer.

GORDON and THOMS, in reply, contended for the incompetency of the motion, and that the pursuer had no right to interdict until his right has been ascertained under the action.

At advising—

The LORD JUSTICE-CLERK—It is necessary to explain formally the grounds upon which our judgment proceeds. In cases of this sort it is a competent remedy for the party at one time to ask an immediate interdict, and at other times not to ask interdict until he has established his whole right by action, including in action a process disposed of on a passed note of suspension. The pursuer here is complaining of a fraudulent invasion of his fair trading privileges, of a deception practised on the public, which has the effect of interfering with his lawful rights, and he stands pretty much in the position of a patentee complaining of an infringement of the privileges secured to him by his patent. The question is, whether he is entitled to immediate protection, or must, in the first place, establish his right to get interdict? When a party thinks he is entitled to immediate remedy he goes to the Bill Chamber with a note of suspension; but if not, he raises an action for establishing his right, or he brings a suspension and interdict without asking interim interdict in the Bill Chamber. After the question has been tried in all this class of cases, it follows necessarily, on the establishment of the pursuer's right, that the pursuer should have an interdict for the future. The question here is, In which of these two positions the pursuer has placed himself. The summons is not raised on the footing that the pursuer is entitled to interim interdict. It is framed on the footing that the pursuer must establish his own right and the fraud of the defenders as preliminary. It must be observed that the form of action, whether it be one of damages or declarator, makes no difference. In cases of copyright, a party does not bring a declarator of copyright, but an action of damages. So here this gentleman brings an action of damages, and I cannot concur with the Solicitor-General that the conclusions of the summons are not in terms of the Act 13 & 14 Vict. c. 36. I think they are consistent with the first schedule appended to the Act. I can say, from my own experience, that after the passing of the Act the universal interpretation put upon the words of the schedule was not that they were limited to a liquid document of debt, but were intended as an illustration of the manner in which the conclusions should be put. I think, therefore, that the conclusions are right, as showing that the action is one of damages. And in the absence of all precedent, I think, without saying whether this motion is incompetent or not, that it ought to be refused.

The other Judges concurred.

The motion was accordingly refused.

Agents for Pursuer—Webster & Sprott, S.S.C.

Agent for Defender—Wm. Officer, S.S.C.

Thursday, July 5.

FIRST DIVISION.

DEMPSEY *v.* E. & G. RAILWAY COMPANY.

Jury Trial—Special Jury. Motion by a party for a special jury *refused.*

This case was set down for trial at the ensuing sittings. It is an action of damages for injury sustained through the alleged fault of a railway company.

The SOLICITOR-GENERAL for the defenders (BLACKBURN with him) moved for a special jury to try the case. There was no particular reason why it should be so tried, except that it was a case against a railway company; but the Court were in use to grant such a motion if made by either party. The railway company were willing to pay any additional expense thereby caused.

CATTANACH for the pursuer opposed the motion.

The Court refused it. There was no reason assigned for it, and as cases to be tried by a special jury had to be set down for a particular day and then tried, the arrangements of the Court for the sittings would be interfered with.

Agent for Pursuer—Alexander Wylie, W.S.

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

BROATCH *v.* JENKINS.

Fraud — Concealment — Misrepresentation — Relevancy—Issue. (1) Averments of fraudulent concealment which held irrelevant, there being no averment of a duty to communicate. (2) Averments of fraudulent misrepresentation which sustained as relevant. Issue adjusted.

This is an action of reduction of a minute of reference, and an award following thereon. The defender David Jenkins is a writer in Kirkcudbright, and was law-agent for the late Adam Rankine, who incurred various business accounts to him. After Adam Rankine's death, which happened on 1st November 1862, his son and heir-at-law employed the pursuer, also a writer in Kirkcudbright, as his law-agent. In consequence of this employment the pursuer had various interviews with the defender in regard to the settle-