

MORTON  
v.  
BARCLAY, &c.

requiring a special verdict. If you think a fraud was intended, you will then find for the pursuer; but if not, you may then find that John Simpson did not refuse, and did not fraudulently fail to deliver back the deed.

Verdict—Finding for the defender on the first issue, and, on the second issue, that Walker did require back the deed for the purpose of cancelling it; and that Simpson did not refuse or intentionally delay to deliver it up.

*Jeffrey and J. S. More, for the Pursuer.*

*Cockburn and Jamieson, for the Defender.*

(Agents, *Andrew Smith, w. s., and Russell, Anderson, & Tod, w. s.*)

PRESENT,

THE THREE LORDS COMMISSIONERS.

MORTON v. BARCLAY, &c.

1824.  
March 15.


Damages found in absence of the defender, for infringement of a patent.

**DAMAGES** by a patentee for infringement of his patent.

DEFENCE.—The machine was not an original invention. The machine manufactured by the defenders is altogether different from that described in the pursuer's specification.

## ISSUES.


MORTON  
v.  
BARCLAY, &c.



“ It being admitted, that, on the 18th day  
 “ of August 1818, the pursuer obtained Let-  
 “ ters-Patent under the Great Seal, kept and  
 “ used in Scotland in place of the Great Seal  
 “ thereof, whereby he acquired the exclusive  
 “ privilege, for and during the period of four-  
 “ teen years from the said 18th day of August,  
 “ of using, as his original invention, certain  
 “ machinery for drawing ships out of the wa-  
 “ ter on dry land, being an improved method  
 “ of performing that operation, and that the  
 “ pursuer (as required by law, and by the said  
 “ Letters-Patent) did make out a particular  
 “ description of the nature of the said inven-  
 “ tion, and in what manner the same is to be  
 “ followed out, and did, within four months  
 “ of the said Letters-Patent, as required, viz.  
 “ on the 17th day of December 1818, make  
 “ out, sign and seal, and cause to be enrolled in  
 “ the Court of Chancery, a specification or par-  
 “ ticular description of the nature of the said  
 “ invention, a copy of which said specification  
 “ is transcribed into the summons in this case.

“ Whether the said machinery described in  
 “ the said specification, for the purpose of  
 “ drawing ships out of the water on dry land,  
 “ was an original invention of the pursuer ?

MORTON  
v.  
BARCLAY, &c.



“ Whether, on or about the 26th day of  
 “ October 1821, and subsequent to the date  
 “ of the said Letters-Patent, and of the said  
 “ enrolment of the specification, the defenders,  
 “ by themselves, or others carrying on business  
 “ as shipwrights in Glasgow, under the firm  
 “ of the Stobcross Shipwright Company, did,  
 “ without the consent or permission of the pur-  
 “ suer, and in contravention of the privilege  
 “ granted and protected by the said Letters-  
 “ Patent, erect machinery at or near Stobcross,  
 “ near Glasgow, in imitation of, and which was  
 “ substantially, and in effect, the same with the  
 “ machinery described in the said specification,  
 “ to the loss and damage of the said pursuer ?”

The law of pa-  
 tent in Scotland,  
 the same as in  
 England.

The notice of trial was proved, but the de-  
 fenders failed to appear.

Before the trial commenced, the Lord Chief  
 Commissioner inquired, Whether there was  
 any Scotch authority on the subject of patent,  
 as he had not been able to find any; it was an-  
 swered, that the English law had been tacitly  
 adopted.

One of the witnesses, called for the pursuer,  
 stated, that he did not consider the machine  
 used by the defenders so good as that for which  
 the pursuer obtained the patent.

**LORD CHIEF COMMISSIONER.**—That evidence goes in diminution of damages. This is a case in which a Jury in England would find a shilling damages, which establishes the right; but if you wish to recover damages, you may prove them.

MORTON  
v.  
BARCLAY, &c.



*Jeffrey* opened the case for the pursuer, and described the patent machine, and the one which was said to be an imitation, and exhibited a model of each.

**LORD CHIEF COMMISSIONER.**—The case is closed without appearance for the defender; but the pursuer must make out, by clear and distinct evidence, that the machine was an original invention, and not used before,—that it is useful, and has been invaded.

The witnesses all agree in the originality and utility of the invention, and the pursuer has established his right to it. The invasion is also established, and, therefore, there can be no doubt in finding for the pursuer.

The only point is, what damages ought to be given. This is the first case in this Court of an action brought to establish a right where no damages have been proved, and as the right

CUNNINGHAM  
v.  
SPENCE.

will be established by finding a shilling, I think it will be better to find that sum, which will form a precedent for other cases.

Verdict for the pursuer, damages 1s.

*Jeffrey, R. Bell and Skene, for the Pursuer.*

(Agent, *W. Bell, w. s.*)

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PRESENT,

LORDS CHIEF COMMISSIONER AND GILLIES.

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CUNNINGHAM v. SPENCE.

1824.  
March 16.

Finding for the defender on a question of death-bed, and for the pursuer on a question as to the validity of a deed signed by a blind witness.

**R**EDUCTION of a deed signed by notaries, on the ground, that the granter was on death-bed, and that one of the instrumentary witnesses was, and is blind.

ISSUES.

“ It being admitted that the disposition  
 “ and assignation under reduction was exe-  
 “ cuted on the eighth day of September 1821,  
 “ and it being admitted, that Isobel Cunning-  
 “ ham died on the fifth day of October 1821,—  
 “ 1. Whether, on the said eighth day of  
 “ September, the said Isobel Cunningham had  
 “ contracted the disease of which she after-  
 “ wards died ?