

1850 to 1864 a customer of the firm of John Nixon & Sons, lambswool and hosiery-yarn spinners at Lynnwood, near Hawick, and that the defender William Nixon was, during the years before mentioned, and is now, the sole surviving partner of that firm:

"Whether the defender's firm, from time to time during the years before mentioned, prepared and issued to their customers, including the pursuer, price lists, and exhibited the same in the counting-house of the said firm? And whether, during the years 1855 to 1864 inclusive, the pursuer was induced to purchase yarns from the defender at the prices specified in said price lists, by false and fraudulent representations made by the defender to the pursuer, to the effect that the prices specified in said price lists were the fixed prices charged to all customers? And whether, between the years from 1855 to 1864 inclusive, or any of them, the defender granted abatements or deductions from, or sold yarns at less than the prices stated in the price lists of the day, under which purchases had been made by the pursuer, to Robert Walker, hosier, Leicester; Robert Scott & Sons, manufacturers, Dumfries; Milligan, Henderson, & Company, manufacturers, Dumfries; and Henry Wales, manufacturer, Leicester, or any of them; and in consequence thereof these parties, or any of them, were enabled to undersell, and did undersell in the market, the pursuer as a manufacturer of lambswool hosiery, to the loss, injury, and damage of the pursuer?"

Damages laid at £10,000.

The Court to-day unanimously dismissed the action, with expenses.

The LORD PRESIDENT—I don't think there is a very good ground of action founded upon the deductions or abatements said to have been given to certain parties. It does not follow that because a person holds out prices in a price list he is not to sell subsequently at lower rates. He did not bind himself not to sell at lower rates. There was no such condition. I don't understand what is meant in this case by fraudulent. It is not said that the sales to the other parties were fraudulent. There is altogether a want of substance in this claim of damages, and I think the action should be dismissed.

Lord CURRIE HILL—I had very great difficulty in discovering at the debate what the pursuer meant to represent as his ground of action. There are two categories under which the case might fall. It might be said that there had been a breach of contract—that the goods which the pursuer purchased were sold to him by the defender on a condition that he would not sell to another at a lower price. Again, it might be said that there had been fraudulent representations made by the defender as to his dealings with third parties. I asked at the debate under which of these categories the pursuer thought his case fell, but I could not get any answer. I see, however, from the issue now proposed that the case is put as one of fraudulent representation—that the sales by the defender to the pursuer were vitiated by false representations as to sales already made to other parties. The question, therefore, comes to be, Is there averred such a case of vitiation as to afford good ground for giving restitution? I don't find any such case stated on record. Besides that, there is a total want of specification as to the purchases and sales. On both these grounds I think this action should be dismissed.

Lord DEAS—If the pursuer's allegations had come up to this—that a contract had been made that the seller should never sell at lower prices to others than he did to the pursuer, and that that contract had been broken, I would not have doubted the relevancy of the action. But that is plainly not the ground of action. I don't say that the pursuer may not be able to state a relevant case founded on fraudulent representation. It would require, however, to be very distinct and specific. This statement is vague throughout in regard to the representations made, their falsehood, and their consequences. It is not said that the purchaser sustained loss. On the contrary, he made a profit, but it is said he might have made a greater profit. That may not be quite clear. In short, the whole matter from beginning to end is too vague and indefinite in a case of the novelty of the present one.

Lord ARDMILLAN—This is a very peculiar case. It is an attempt, after the lapse of fifteen years from the commencement of the transactions, to open them all up on averments of fraud of a very singular character. It is not said the pursuer bought his goods at too high a price, or had to sell them at too low a one. No injury is set forth. The pursuer carried on a lucrative business, but he says he has been injured by reason of dealings betwixt the sellers to him and other parties. I think it quite possible that such a case might occur, and be stated, but it would require to be far more specific than anything we have here.

Counsel for Pursuer—The Solicitor-General, Mr Gordon, and Mr M'Kie. Agents—Messrs Webster & Sprott, S.S.C.

Counsel for Defender—Mr Clark and Mr Watson. Agents—Messrs Paterson & Romanes, W.S.

LONGWORTH *v.* HOPE AND COOKE.

(*Ante*, vol. i., p. 53.)

Motion for New Trial—A party not appearing to support a motion for a rule, the Court held the motion as passed from.

The trial of this case resulted in a verdict for the defenders. The pursuer, immediately after the verdict, gave notice of a motion for a rule on the defenders to show cause why a new trial should not be granted. This motion was in the roll to-day for hearing, but no one appeared for the pursuer.

SHAND, for the defenders, read a letter dated the 14th instant, which had been addressed to their agents by Mr James Somerville, S.S.C., in which he stated that he had ceased to act as agent for the pursuer.

CAMPBELL SMITH, who had formerly acted as counsel for the pursuer, was sent for, and he stated that he had ceased to act as the pursuer's counsel on Saturday last. He also stated, in answer to the Lord President, that he believed the pursuer was aware that her motion was set down for to-day for hearing.

The Court, in these circumstances, held the notice of motion as passed from by the pursuer, recalled the sist of procedure which had been granted when the notice of motion was given, and remitted to the Lord Ordinary to apply the verdict of the jury.

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

CAMPBELL'S TRUSTEES *v.* CAMPBELL'S EXECUTORS, *et e contra*.

Fraudulent Impetration—Essential Error—New Trial—In a reduction of an agreement on the

grounds of fraudulent impetration and essential error, new trial *refused*.

This case involved a question as to the validity of a deed of agreement, dated in September 1857, entered into betwixt two brothers, both of whom are now dead—Mr William Gunning Campbell of Fairfield, and Mr George Gunning Campbell. The two brothers were children of the proprietor of the estate of Sorn in Ayrshire. This estate descended to William, and he acquired besides it a property called Fairfield. George was a medical man in India, where he acquired an immense fortune. The two brothers died—the one in 1857, and the other in 1858. In early life they had an inveterate quarrel, and they had been estranged for about forty years; but upon George's return from India, William invited him to Fairfield, and George some time thereafter executed a deed by which he bound himself to advance £20,000 for the purpose of purchasing additional land adjoining Fairfield, which was to be settled on the same heirs as Fairfield was, that so the possessions of the family might be increased. This was the deed challenged. George maintained before his death that he had been cheated into signing it, and after his death his trustees sought to reduce it. It was challenged on the grounds (1) of fraudulent impetration by William Gunning Campbell, and (2) of essential error induced by him.

These issues were tried before Lord Jarviswoode and a jury on the 3d, 4th, and 5th November 1864, when a verdict was returned for William G. Campbell's executors upholding the agreement.

The pursuers on the issues moved for a rule on the defenders, with a view to a new trial. The rule was granted and a hearing took place thereon.

To-day the Court intimated that although there was room for a good deal of argument on both sides of the case, they had come to the conclusion that there was not sufficient ground to disturb the verdict of the jury. The rule was therefore discharged with expenses.

Counsel for Pursuers—Mr Clark, Mr Gifford, and Mr John Hunter. Agents—Messrs A. & A. Campbell, W.S.

Counsel for Defenders—The Solicitor-General and Mr Fraser. Agents—Messrs Webster & Sprott, S.S.C.

SECOND DIVISION.

GILLESPIE v. YOUNG AND OTHERS.

Reparation—Relevancy—Consequential Damage—

1. Averments which held not relevant to sustain an action for reparation, in respect they contained mere expressions of opinion, not statements of facts—2. Held that the alleged damage was 'consequential' and therefore not recoverable.

This is an action at the instance of Mrs Honeyman Gillespie, the heiress of entail in possession of the estate of Torbanehill, with concurrence of her husband, Mr Gillespie, against Mr Young, manufacturing chemist, Glasgow, and two firms of chemists, of which he is a partner. The summons concludes for £32,900 of damages. The estate of Torbanehill contains a seam of a valuable mineral substance, known as the "Torbanehill mineral," which the pursuers say is a bituminous shale, and not a coal. The mineral is extensively used in the distillation of paraffine oil. The defender, Mr Young, in 1850 obtained a patent giving him the exclusive right to manufacture paraffine from bituminous coal; and

after procuring his patent he advertised that it included the manufacture of the pursuer's mineral, and raised actions against several manufacturers who had purchased Torbanehill mineral for the distillation of paraffine. The pursuers, who received a lordship from their mineral tenants of one-seventh of the actual output from the mines, make the following averments in support of the action:—

"5. The Torbanehill mineral of the pursuer's estate is, as already mentioned, a peculiar species of bituminous shale, and is not in fact, or in contemplation of law, comprehended under the term "coal" used in the specification of the defender, Mr Young's invention; nor does the patent right granted to the defender, as limited by the specification thereof, give him or his assigns, for the period therein mentioned, the exclusive privilege of obtaining paraffine oil, or other products of distillation, from the said Torbanehill mineral, or from any other description of bituminous shales. On the continent of Europe, in countries where fiscal or import duties are laid on coal, the Torbanehill mineral is admitted duty free, because it is not coal, but a bituminous shale or schist. In particular, the mineral in question, *qua* a bituminous schist (*schiste bitumineux*), has been admitted free of the duty of coal into France, and into Prussia and Germany. More specifically still, it has been admitted in that character into the city of Paris, and into the port and city of Marseilles. It has been so admitted also into the port and city of Frankfort-on-the-Maine, there to be used; as also *in transitu* to the different cities and States of the Zollverein, all since the year 1851.

"7. Notwithstanding that the defenders' patent right is limited by the terms of the specification to the obtaining the produce therein mentioned from coal, and that the manufacture of these products from bituminous shale was public property at and prior to the date of their said patent, the defenders have for a long time, and at least for the whole period since the commencement of the year 1860, most falsely, fraudulently, and maliciously represented that their patent gives them the exclusive privilege of manufacturing and obtaining paraffine oil, or oil containing paraffine, by distillation from the Torbanehill mineral, which they term Torbanehill or Boghead coal, or Boghead gas coal, in order to give colour to their assertion of an exclusive privilege of converting the same into paraffine oil. And they have at various times during the aforesaid period threatened to institute legal proceedings against parties who were in the course of exercising their lawful right of manufacturing paraffine oil from the Torbanehill mineral, upon the pretext that such manufacture was an infringement of their alleged patent right. They have, by such false, fraudulent, and malicious representations and threatened proceedings, induced various manufacturers and others to take out licenses from them, and to pay them large sums of money as lordship for the privilege of applying their patented process to the manufacture of paraffine oil from the Torbanehill mineral; and they have, by such false, fraudulent, and malicious representations and threatened proceedings, prevented various manufacturers and other persons from engaging in or carrying on the manufacture of paraffine oil from the Torbanehill mineral, and from making purchases of the said Torbanehill mineral from the pursuers; by all which the market-value of the pursuers' mineral estate, and of the mineral wrought therein, and belonging to them, has been greatly depreciated, and the sale thereof impeded, and the pursuers injured in their rights as mineral proprie-