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will be necessary to have it well defined. You have the opinion of the Court that I was wrong in the decision excluding the compensation. The natural remedy for this was to grant a new trial, but, instead of this, we discharged the rule, but coupled this order with a condition. You cannot except to the decision of the Court, as it reverses my decision; you must except to it only in so far as it couples the discharge of the rule with certain conditions.

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PRESENT,

THE LORD CHIEF COMMISSIONER.

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1824.
Jan. 14.

WALKER v. STEEL.

Finding for the defender on an issue, whether a woman was facile, and whether she required a deed to be returned for the purpose of being cancelled.

AN action of reduction of a disposition and deed of settlement, on the ground that the granter had been prevailed on, and concussed to grant it.

ISSUES.

“ It being admitted that, on the 28th
“ day of March 1822, the late Margaret
“ Walker signed the disposition and deed of
“ settlement in process, and that the said deed

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“ was prepared by John Simpson, writer in
“ Bathgate, in the county of Linlithgow, and
“ after signature remained in the custody of
“ the said John Simpson from the 28th day of
“ March till after the death of the said Mar-
“ garet Walker, which took place about five
“ days afterwards, viz, on the 3d or 4th day
“ of April of the year aforesaid :—

“ Whether, on or about the said 28th day of
“ March, the said Margaret Walker was in a weak
“ state of mind, and liable to be easily imposed
“ upon ;—and whether the defender did take
“ advantage of her said state of mind, and did
“ prevail upon her by importunities and solici-
“ tations to execute the aforesaid deed ?

“ Whether, after having signed the afore-
“ said deed, the said Margaret Walker did,
“ on the 2d or 3d days of April, require the
“ said John Simpson to deliver back the said
“ deed to her, the said Margaret Walker, that
“ she might cancel and destroy the same ;—
“ and whether the said John Simpson refused
“ or failed to deliver up the said deed ?”

Cockburn, for the defender, said, That the only question here was on the second issue, and on it there was only one witness. The failure to deliver must mean an improper failure.

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LORD CHIEF COMMISSIONER.—This is a case sent, that the Court of Session may know whether, upon the finding of the fact by you, they ought, or ought not, to reduce a deed? The case, as originally brought, contained an allegation that the granter had been kept separate from her friends, and was concussed to grant the deed; but, in the condescendence in this Court, the case was brought down to the question contained in the issues, which may be disposed of either by a general finding for the pursuer or defender, or by giving a distinct answer to each issue.

As the reduction here is not grounded on incapacity, a finding as to the state of mind is of no consequence, unless it is coupled with a certain degree of imposition. You must have clear evidence of imposition, of solicitations, and importunity.

The witnesses, as to her state of mind, only say, that, *at times*, her mind wandered; but none of them say, that, at other times, she was not capable of giving directions for such a deed; and you must presume that the act was done in a lucid interval, unless the contrary is proved, and I think there is, in this case, direct evidence of capacity.


The evidence of importunity is confined to

one occasion, and you will judge whether what she did was not the result of her own feeling, rather than the effect of importunity or solicitation ; and unless you are satisfied for the pursuer on both points, perhaps the best course is to find generally for the defender, as that will be a complete discharge of your duty.

Mr Cockburn says, and I think he is right, that the two parts of the second issue must be taken together. I am also of opinion, that the evidence of the witness ought to be left to you, as she is not a single witness to a detached part of a case ; but there are facts and circumstances connected with her evidence, which renders it proper for your consideration. It would be nugatory to find specially on the first part of the issue ; but, as I do not know how the Court of Session may deal with the second part, perhaps it is better to find separately on each. Whether he failed to deliver, is equivocal, and it would have been better if it had been, whether he fraudulently failed, as the meaning is, whether he, *mala fide*, from bad intention, failed to deliver ? If the failure proceeded from the act of God, it would be hard to cut down the deed, but that is for the consideration of the other Court.

There does not seem to me any facts here

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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.