

had the remark made (clearly sound in law), that the *tenendas* is not a conveying clause, and that it is generally not enough by itself. That certainly is a doctrine which hardly required much authority ; but we were referred to very high authority on that subject, and among others to a most recent authority, I mean the late Professor Menzies, whose Lectures on Conveyancing are of the highest value, in which he lays down that doctrine as he found it in all the institutional writers. But it does not follow from that, that the mention of "fishings" in the *tenendas* is of no use in any case whatever, if the fishings are not mentioned in various parts of the deed. On the contrary, in that very dissertation Professor Menzies lays down this, "At the same time, while the *tenendas* cannot transmit a right, it may in some cases raise a presumption in favour of the grantee, so as to entitle him to establish a right by evidence of possession, but it is certain, that without such possession no right is conferred." Now, that is the very position in which we are in reference to this case. I therefore hold, that the transaction of 1761 is to be regarded as one which replaced the vassal in the right which he previously had in the fishings. But if it were otherwise, it cannot be set aside by placing an inconsistent construction on the surrender of the vassal by holding, that those expressions which cover his surrender are not equally competent to cover his replacement. If there was no replacement, I think it is clear, that there was no surrender. At all events, I think he had the option, and he has now the right of ascribing his possession to that title which he may regard as most secure. And, therefore, whether the Crown insist, that the rights were then surrendered or not, I think in either view of the case, that the vassal has defended his right successfully against the challenge that is made on the part of the Crown.

Interlocutors affirmed, with costs.

Appellant's Agents, A. Murray, W.S. ; Horace Watson, Westminster.—*Respondent's Agents*, G. L. Sinclair, W.S. ; Grahames and Wardlaw, Westminster.

JULY 11, 1867.

MRS. ELIZABETH HONEYMAN GILLESPIE of Torbanehill, and Husband,
Appellants, v. JAMES YOUNG and Others, *Respondents*.

Reparation—Slander of Title—Torbanehill Mineral—Fraud—*G.*, the owner of lands from which a mineral or bituminous shale was produced, raised an action of damages against *Y.*, the patentee of a mode of extracting paraffine oil from bituminous coals, for fraudulently representing, that his patent gave him the exclusive right of obtaining such oil from the said mineral ; but there was no allegation that *Y.* knew this mineral was not coal, nor any occasion stated when he made such alleged false representation.

HELD (affirming judgment), *That the allegation of G. was not relevant to sustain the action.*¹

The action was raised by Mrs. Gillespie and her husband, concluding for damages on account of certain alleged false and fraudulent representations made by Mr. Young, the respondent, with reference to an alleged patent right, whereby the value of the mineral property of the appellant was depreciated in the market, and damages sustained by them to the extent of £23,000 and upwards. The substantial ground set forth in the condescence was, that the respondent, being the patentee of a process for extracting paraffine oil from coal, represented, that he had the exclusive right of extracting such oil from the mineral now known as the Torbanehill mineral, whereby he deterred people from buying and using such mineral, and so lessened the profits which the appellant, as owner, might have derived from its use by the public at large for distillations of similar oil. And this was alleged to have been done fraudulently by the defender to the loss of the pursuers. The defence was, that the allegations were irrelevant and insufficient to support the conclusions of the action. The Lord Ordinary held, that no relevant ground of action was set forth, and the Second Division adhered, and dismissed the action.

The pursuer now appealed against these interlocutors.

The pursuer in her *printed case* stated the following reasons for reversing the interlocutors :—
1. Because the summons and pleadings contain relevant allegations of false and fraudulent misrepresentations of fact on the part of the respondents, to the appellants' loss, injury, and damage ;

¹ See previous report, 4 Macph. 715 : 38 Sc. Jur. 380. S. C. 5 Macph. H. L. 106 : 39 Sc. Jur. 567.

and because the appellants are entitled to have these allegations put in issue, and sent to trial—
 2. Because the respondents have persistently and fraudulently, without any legal title, represented, that they were in possession of an exclusive privilege, or patent, for the production of paraffine oil from bituminous shale, thereby lowering the price in the public market, and injuring the sale of the appellants' mineral property, and are thereby guilty of a legal wrong, for which they are liable to make compensation in damages. 3. Because the possession by the respondents of a patent for one manufacture is no justification of the representation, that it is applicable to another and a different manufacture; and such a representation, if false, fraudulent, and injurious, entitles the injured party to pecuniary reparation. 4. Because the question at issue, in so far as it involves the alleged false and injurious sense of representations made and circulated by a party alleged to be interested in making them in that sense, and to have profited largely by their circulation, is a question which ought to be submitted to a jury; and because it is not to be assumed, on the mere statement of the respondents, that the words do not bear the meaning imputed to them, or, that they were made in good faith, and as matter of opinion. 5. Because the injury sustained by the appellants is neither due to the operation of the patent laws, nor to the rights acquired by the respondents under their patent for the distillation of coal (a matter in which the appellants are noways interested); and the appellants could not therefore have obtained relief by *scire facias*, reduction, or other process adapted for the trial of the question of the validity of the letters patent.

The respondents in their *printed case* stated the following reasons for affirming the interlocutors:—1. Because the appellants' averments are not relevant or sufficient in law to support the conclusions of the action. 2. Because the facts, as averred by the appellants, do not shew, that any legal wrong or injury was done to them by the respondents, in respect of which the respondents can be held responsible in damages. 3. Because the appellants' claim, as stated on record, is a claim for remote and consequential damages, and is not maintainable in law.

The *Attorney General* (Rolt), and *Asher*, for the appellants.—The Court was wrong in holding there was no relevant case alleged by the pursuer. The allegations were in substance, that the defender, knowing the Torbanehill mineral not to be coal, falsely and fraudulently represented, that it was coal, and that the pursuer suffered loss by reason of this false representation. These were sufficient allegations to sustain an action, and entitled the pursuer to a trial of the issues of fact thereby raised. Wherever one is directly injured by the fraud of another, he has a right to sue for damages, and it is not necessary, that there should be any privity of contract between them—*Davidson v. Tulloch*, 3 Macq. App. Cas. 783, *ante*, p. 930; *Cullen v. Thompson*, 4 Macq. App. Cas. 424, *ante* p. 1143; *Gillespie v. Russel*, 3 Macq. App. Cas. 757, *ante*, p. 877.

This case is analogous to what is called in English law slander of title—*Brook v. Rawl*, 4 Exch. 521. It also resembles the cases where it has been held, that interference with another in carrying on his business is a good cause of action—*Garret v. Taylor*, Cro. Jac. 567; *Tarleton v. MacGawley*, Peake, 270; *Bell v. Midland Railway Co.*, 10 C. B., N. S., 307.

On the question of relevancy it must be assumed to be a fact, that the Torbanehill mineral is not coal; though it is well known this point was long disputed.

Sir R. Palmer Q.C., *Dean of Faculty* (Moncreiff), and *Grove Q.C.*, for the respondents.—There is no relevancy in what the pursuer alleges in this case; and she fails in both the cardinal points, misrepresentation and damage. There is no sufficient allegation of falsehood and fraud—nothing to the effect that the defender ever stated this mineral to be coal, far less, that he knew it to be not coal. It is well known this has long been a debateable and is still an unsettled question. It has not yet come within the category of matters of fact, and therefore to charge one with fraudulently stating that which nobody can tell one way or the other how it is as regards the fact, is no ground of action.

As to the advertisements issued, they amounted to no more than this, that the defender would protect his rights whatever they were under the patent, and he was entitled to do so. Malice is essential to maintain an action of this kind—*Hargrave v. Le Breton*, 4 Burr. 2422; *Smith v. Spooner*, 3 Taunt. 246.

The damage is too remote, even assuming the fact to be misrepresented. It is like the case of one who derives a profit from selling colchicum suing another for saying it does not cure gout; or a grocer suing a person who says green tea is an injurious beverage. There is no direct and necessary connexion between the representation and the damage.

LORD CRANWORTH.—My Lords, this is a case in which the appellants are the owners of the lands of Torbanehill, which are described to be in the parish of Bathgate, in the county of Linlithgow; and it appears, in a manner, that your Lordships can look to, upon the question of relevancy now before the House, that these lands form part of a district of about 5000 acres, belonging, as alleged on the record, to ten or twelve different proprietors, and they contain a seam of a peculiar mineral. In a great portion of this area the mineral is very thin, and mixed with impurity, but it is not so in the part that belongs to the present appellants, where it is stated to be a very valuable mineral, and the product of it is the most productive source of paraffine oil. It appears on the record, (which has not been adverted to to-day,) that the appellants leased the

minerals or some of the minerals under their land, to a gentleman of the name of Russel, and a very protracted litigation took place between the Gillespies and the Russels on the subject of this lease, *i.e. inter alia*, as to whether it did or did not include the Torbanehill mineral. The decisions were very conflicting. They went first for one party, then for the other, but at last the parties had the good sense to come to an arrangement; and, as appears by the twenty-second Article of the Condescendence, they entered into a contract, in which, after reciting that the one party had treated the mineral as a gas, parrot, or cannel coal, and the other had asserted that it was not a coal at all, but a new mineral, they had agreed, that a royalty should be paid to the proprietor, and that to prevent either party from being concluded by the name, it should in future be called "the disputed mineral."

That being so, it is necessary to remark, that the defendants are the proprietors of a patent, dated 7th April 1851, for an invention which is described by the patentee in these words:—"My said invention consists in treating bituminous coals in such manner, as to obtain therefrom an oil containing paraffine, (which I call paraffine oil,) and from which oil I obtain paraffine."

Now, the contention is, that the Torbanehill mineral is not coal, and consequently, that the patent did not enable the patentee to manufacture exclusively, and to use a patent for extracting the oil from the Torbanehill mineral, because it was not coal. It was not contended—of course it could not be successfully contended—that he had not a right to get his paraffine oil from Torbanehill mineral—there was no counter patent to prevent his doing that—but if the contention of the appellants is right, although the defendant might use Torbanehill mineral for extracting from it paraffine oil, he could not prevent others from the use of that mineral.

The allegations of the present appellants, who were the pursuers below, are these:—They say that the mineral in question is a species of bituminous shale, not, in fact, or in contemplation of law, comprehended under the term "coal" as used in the patent; and in the seventh article of their condescendence they say, that "Notwithstanding that the defenders' patent right is limited, by the terms of the specification, to the obtaining the products therein mentioned from coal, and that the manufacture of those 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 the 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." And then, at the end of the same article of their condescendence, they say—"The defenders knew that the said representations which they so made were false; and, in particular, they knew that their patent did not extend to or apply to the manufacture of oil or paraffine from the Torbanehill mineral."

It is, in truth, upon that allegation that the whole foundation of this claim rests. The question is, whether it sets out a ground of complaint which any Court of Justice ought to entertain. I am very far from being at all inclined to dispute or to qualify the necessity that there is in all Courts of Justice of maintaining the strictest truth in all allegations, whether as to individuals or as to the public, and if there had been an allegation here, that the defender, knowing that his patent did not contain the mention of Torbanehill mineral, had represented that it did in terms include the Torbanehill mineral, and that he had thereby prevented persons purchasing from the pursuer the Torbanehill mineral, in order to use it for the manufacture of paraffine oil, I should have been very reluctant to hold, that such an allegation would not give a right of action to persons injured by such false allegation. But that is not the present case. The allegation here is, not that there was a misrepresentation of anything properly called a fact, but that the defenders knew that their patent did not extend or apply to the manufacture of oil from the Torbanehill mineral. Now, taking the whole condescendence together I cannot think, that the question whether the defenders knew that their patent did not extend or apply to the Torbanehill mineral, is, strictly speaking, a question merely of fact. At the same time, had there been any distinct allegation of specific acts of misrepresentation, so as to have proved a specific case of misrepresentation, not resting on the general averment contained in the seventh condescendence, I might have thought, that they had brought the case at least to a point on which, upon the question of relevancy, this Court ought to have decided in favour of the pursuers: but on looking closely at the record, I cannot find any allegation of a representation, that his patent did extend to the Torbanehill mineral, or that he obtained any royalties from persons who were manufacturing paraffine oil, by alleging, that his patent extended to that article.

It is supposed, on the part of the appellants, that this allegation is to be found in the ninth article of the condescendence; but I have looked at that article with great attention, to see whether it does at all necessarily involve a proposition, that the patent extended to the Torbane-

hill mineral. I can find nothing of the sort. The condescendence is involved in a great deal of unnecessary verbiage; but I have extracted that which the averment really amounts to. The allegation is, that, since the date of a certain letter, the defendants have continued falsely to publish their representations, that the manufacture of paraffine oil from the Torbanehill mineral, and from bituminous shale, was protected by their patent, and to threaten legal proceedings. Up to that point it is all completely general; but then, to give an illustration of what they mean by alleging that the defendants published these representations, they say: In particular the defendants have publicly advertised in the principal newspapers and by placards, that the paraffine oil manufactured at the Bathgate works was Young's patent paraffine oil, although nearly the whole was obtained from the Torbanehill mineral. That is not an allegation that they represented that their patent covered the Torbanehill mineral. There might have been a false representation, that they had got from their own coal that which in truth they had got from the Torbanehill mineral. But that is not at all what is suggested here as the ground of this action, namely, that they were falsely representing that their patent covered the Torbanehill mineral. Then the condescendence goes on to say: That the defendants' oil was obtained from the Torbanehill mineral was well known to every person commercially interested in the production and sale of paraffine oil. What then? That might lead them to know, that the defendants were falsely representing, that they had got their paraffine oil from some substance from which they did not get it; but there is no allegation here, that they made any representation at all amounting to this, that their patent covered the Torbanehill mineral. As to the representations contained in public advertisements, referred to in the 13th condescendence, they were merely advertisements of facts, with respect to orders which had been obtained in the Court of Chancery against persons who had violated their patent. There is not the least suggestion, that those advertisements contained any statement that their patent covered the Torbanehill mineral.

Then if there was no such representation, we come to the question—Did the defendants obtain royalties from persons in the habit of working the Torbanehill mineral, by representing to them, that their patent covered that which they knew to be false? It is perfectly compatible with all that is here stated, that what they said to those parties was this: If you do not pay us a royalty, we shall proceed against you, alleging that our patent covers the Torbanehill mineral. That they had a right to do; but there is no allegation, that they told them that it did so. It is quite consistent with all that is asserted, that they merely told those parties, that if they did not pay them a royalty, they would proceed against them on the hypothesis, that their patent did cover the Torbanehill mineral.

That is quite clear when you look at the different allegations. In the tenth condescendence, it is a simple statement, that, by threats of legal proceedings, the defendants induced a company carrying on business at Cambuslang to take out a license for the manufacture of oil from the Torbanehill mineral, which in their agreement was described as Torbanehill coal, and by that agreement those persons stipulated to pay them certain royalties. That might be, because, it being a very doubtful matter, they were content to pay a royalty, rather than run the risk of litigation. In the eleventh condescendence it is just the same. It merely states, that the defendants threatened legal proceedings against other persons for manufacturing oil from the Torbanehill mineral, if they did not pay a royalty, and, that two firms therein mentioned accordingly took out licenses and paid royalties. The twelfth condescendence is important, because it appears from it, that there is another mineral called "Bonnetts," with respect to which there seems to have been the same doubt, whether it was shale or coal. It is stated, that the defenders have written to certain persons, complaining of their having manufactured paraffine oil from bituminous shale called "Bonnetts." Just the same proceedings are alleged to have taken place as in the case of the Torbanehill mineral. The defenders either obtained a royalty, or threatened to proceed against the parties using this other mineral, if a royalty was not paid.

Now, these are the only allegations, and, in my opinion, what is here alleged is far too vague to ground upon it such an action as this, because this allegation of knowledge rests on the vague assumption, that the persons owning this patent knew that which, in truth, I think is hardly matter of knowledge.

There ought to have been a most distinct explanation of what was done in the matter of the alleged falsehood, in order to obtain these surreptitious advantages.

There is nothing of that kind stated at all specifically; and in my opinion the judgment of the Court below was perfectly right, and I therefore move your Lordships to affirm the interlocutor appealed against.

LORD COLONSAY.—My Lords, this case has come here on the question of relevancy. The judgment of the Court below is not a judgment which assoilzies the respondents from any action, or from any allegations, that can be relevantly made against them, in regard either to the mineral or to the patent. All that it does is to dismiss the action, the Court not being satisfied, that the pursuers' averments contain sufficiently relevant statements. This appears very plain, because the interlocutor of the Lord Ordinary sustained the three defences, one of which was, that the defenders were entitled to be assoilzied; but that is not affirmed by the Inner House. On the

contrary, the interlocutor of the Lord Ordinary is recalled, and an interlocutor is pronounced, which deals with the question of relevancy, and dismisses the action. I think the Lord Ordinary himself intended so to deal with the case, because his interlocutor is one dismissing, not assoilzieing. Whether the pursuers will be able in any other attempt to make out a relevant case, is a matter we have nothing to do with. But the question is, whether we are to sustain this action, as appearing on this record, whether we are to give judicial countenance and sanction to this record as one which sets forth, as it ought to do, sufficient grounds of action, so as to raise a liability against the defenders.

My Lords, it appears to me, that this record does not do so. I think there are several elements wanting, in order to make it such. The substance of the allegations which the pursuers propose to make the groundwork of their action is this, that the defenders, having a patent for a certain limited purpose, falsely and maliciously alleged, that that patent comprehended a mineral of which the pursuers are large proprietors, and thereby precluded parties from making paraffine oil from that mineral. Now, there are two things which I should desire to see stated, before I could support the relevancy of such an action: first, in what respect was the defenders' allegation false? and, secondly, when, where, and in what terms did they make that false allegation? The reasoning of the pursuers seems to be this: The substance that has come out of my lands, and admittedly to a certain extent also out of other lands, is bituminous shale. Your patent is limited to distillation from coal. Bituminous shale is not coal, and my mineral in particular is not coal. They further say: You knew that your patent did not extend to shale. And I think that is admitted on the part of the defenders. But the other step of the allegation which was necessary is this: You knew that the substance was shale, and that it was not coal. And I do not think there is a sufficiently definite allegation of that on the record. That was a simple thing to state absolutely; and I do not think that any ambiguous statement or roundabout way of putting it, so that an inference of that kind might be deduced, is enough on the part of a pursuer seeking damages. I think the record is defective in that respect.

Then, I think it is further defective in respect of the statement of the occasions on which this false allegation is alleged to have been made; for, like my noble and learned friend who has already addressed the House, I cannot discover that any such allegations as the pursuers aver are comprehended in it. That is another defect in this record. It is a very peculiar kind of falsehood which is alleged here. It is not a simple allegation of a fact which is patent to every one. It is an allegation, in the first place, as to the construction of a patent, which is a matter of law. It is an allegation, in the next place, of a knowledge of the particular classification of a certain mineral, as being coal or shale, which is a matter more or less scientific, and therefore it required a very distinct and positive statement to support this as a false allegation. Both parties have referred to a case that occurred between the pursuer in this action, and his tenant, Mr. Russel, in 1853. That case, which is referred to in this record, was raised upon the issue, as to whether the mineral which Mr. Russel was digging out of these lands was comprehended within his lease. He had obtained a lease which gave him a right to various minerals in these lands, one of which was coal; but an action for damages was raised against Mr. Russel, (as it appears from the record before us,) for digging out of the lands a mineral which was not coal. And I think, that the pursuers are correct in stating, that the result of that case was not any decision upon the scientific question, whether this mineral was or was not coal. That question was made the subject of a very great deal of scientific evidence. A great many scientific persons were examined from various parts of the country. I think I sat for six days hearing scientific evidence on that question. We had geologists, who described the strata of the ground in which coal is found, and where this mineral is found. There were mineralogists, who spoke to the colour, lustre, and streak of this mineral, and the corresponding qualities of coal. There were chemists who had analyzed this mineral, and who had analyzed coal, and who spoke to the products, and who had analyzed the products, and spoke to the sub-products. There were a class of scientific gentlemen, who belong to a learned society in the metropolis, who discover scientific facts through the aid of the microscope—those gentlemen had examined this mineral, and they were called to state what substances were to be detected in coal, and what substances were to be detected in this mineral. I may say, that the array of gentlemen on each side was about equal, and the confidence of these gentlemen on each side was about equal; one division of them saying, that it was clearly coal, and the other saying, that it was not coal. I only state this as shewing the nature of the questions involved in this litigation.

I think it appears further from this record, that after that trial had taken place, and the question had been left to the jury there, a new action was raised for the purpose of setting aside the lease, as having been obtained by fraud; and we have the minute of agreement by which the matter was adjusted between the parties; and it appears, that up to the date of that minute in the year 1860, it was a disputed question whether this substance was or was not to be called coal. At the date of the trial in 1853, no name had been discovered for it except "coal," and in 1860, it is stated in the minutes, that the pursuers in the action insisted, that it was not coal, and called it "Torbanehill mineral." The parties adjusted that by giving it a third name, "the

disputed mineral." All that shews, that this is not an open or patent fact. Yet we are told, that, notwithstanding all these disputes and questions, the defender, Mr. Young, the patentee, who was not a party to that action, knew of his own knowledge, that this mineral was not coal. That ought to have been very distinctly stated, and not left to be inferred from doubtful expressions in the record. So, also, I require that the party, in order to entitle himself to damages, should allege particularly the occasions on which the patent was made use of, as a means of preventing the mineral from being sold. I do not find such from allegations here. And in particular, with regard to those advertisements, which are said to have been published at a time when a trial was going on in the metropolis, between Mr. Young and somebody else, I would observe, that, if that trial was upon the question whether this mineral was coal or not, it is plain, that that was a matter then *sub judice*; and if it was not a trial upon that question, still these advertisements had reference to a matter that was then in dependence.

On the whole, I think it would be a very unwise thing, and I think it would be going contrary to the course of procedure, that we have been induced to follow at the other end of the island, with a view to securing accuracy and precision of statement, if we were to allow the party to go to trial upon this record. A pursuer seeking damages should make his allegations so specific, that there can be no doubt as to what is meant, and as to their being clearly within the scope of the record. That is not so here, and I entirely agree in the opinion expressed by my noble and learned friend, that the interlocutor appealed from should be affirmed.

Interlocutors affirmed, with costs.

Appellants' Agents, Morton, Whitehead, and Greig, W.S.; Connell and Hope, Westminster.
Respondents' Agents, James Webster, S.S.C.; Loch and Maclaurin, Westminster.

JULY 16, 1867.

CHARLES WILLIAM CAMPBELL of Boreland, *Appellant*, v. JOHN A. GAVIN CAMPBELL of Glenfalloch, *Respondent*.

The Breadalbane Case.

Marriage—Succession—Legitimacy—Cohabitation beginning in Adultery—Presumption of Lawful Marriage—*J. a domiciled Scotsman, while in England, in 1780, eloped with Mrs. L., and they cohabited together till J.'s death in 1806, having had several children. L. died in 1784, but whether J. and Mrs. L. knew of L.'s death there was no evidence. In 1782 Mrs. L. accompanied J. with his regiment to America, passing as his wife. They returned to England in 1784. Between 1793 and 1806 and afterwards, J. and Mrs. L., among the relations of J., passed as man and wife, and were acknowledged as such. Their son born in 1787 was duly retoured in 1812, as legitimate heir to a Scotch estate which he could not have taken if illegitimate, and this estate was still in the possession of J.'s grandson. In a litigation in 1862, the lawful marriage of J. and Mrs. L., and the legitimacy of their son, were put in issue.*

HELD (affirming judgment), *That the cohabitation by habit and repute was sufficient proof that J. and Mrs. L. were lawfully married, though the cohabitation for the first four years was adulterous, and therefore that their son was legitimate.*¹

This was an appeal against interlocutors of the First Division, whereby the Court found, that the respondent, Mr. Campbell of Glenfalloch, was the nearest and lawful heir of tailzie and provision of the late Marquis of Breadalbane. The cause came before Lord Ordinary Barcaple, who found in favour of the respondent. On reclaiming note to the First Division, that Court ordered cases to be laid before the whole Court. Lord Kinloch declined to take part in the judgment, on account of relationship to one of the parties. Of the rest of the Court, Lord President M'Neill, Lord Justice Clerk Inglis, Lords Deas, Cowan, Benholme, Neaves, Jerviswoode, Ormidale, and Mure agreed with the Lord Ordinary; while Lords Curriehill and Ardmillan dissented.

¹ See previous report 4 Macph. 867 : 38 Sc. Jur. 450. S. C. L. R. 1 Sc. Ap. 182 : 39 Sc. Jur. 576 : 5 Macph. H. L. 115. See also *ante*, p. 1242.