

leaving it for the jury to say whether any damage has been sustained.

To-day the Court adhered.

### JURY TRIAL.

(Before Lord Ormisdale.)

WATT *v.* MENZIES (*ante*, p. 124).

*Reparation—Culpa.* In an action against an omnibus proprietor for personal injuries sustained by a passenger through the fault of the parties in charge of it—verdict for the pursuer.

Counsel for the Pursuer—Mr Scott and Mr Brand. Agents—Messrs Macgregor & Barclay, W.S.

Counsel for the Defender—The Lord Advocate and Mr R. V. Campbell. Agents—Messrs Hamilton & Kinnear, W.S.

In this case, in which Mrs Janet Watson or Watt is pursuer, and Andrew Menzies, coach and omnibus proprietor, Argyle Street, Glasgow, is the defender, the following is the issue sent to trial:—

“Whether, on or about 6th June 1865, and in or near Argyle Street, Glasgow, in consequence of the parties in charge of an omnibus belonging to the defender, in which the pursuer was travelling as a passenger, failing to take due precautions in setting her down from the said omnibus, she was knocked down and injured by another omnibus, through the fault of the defender, to her loss, injury, and damage.”

Damages laid at £300.

Lord ORMIDALE, in charging the jury, observed that he never saw a case more completely for a jury. There was no principle of law involved in the case in regard to which there was any dispute. The whole matter resolved itself into a question of fact as to the party on whom the fault of the accident lay. If the jury were satisfied that damages ought to be awarded, these must not be vindictive damages.

The jury, after having been absent for about an hour, returned a unanimous verdict for the pursuer. Damages, £50.

Thursday, March 1.

### FIRST DIVISION.

RATPORT *v.* THE TAYPORT PATENT SLIP COMPANY (LIMITED) AND DERRICK.

*Servitude—Bleaching and Drying Clothes—Pasture—Issue.* Form of issue to try a question of servitude.

*Reparation—Culpa—Contractor.* Form of issue to try a question of damage caused by a contractor, for which his employers pleaded that they were not responsible.

Counsel for Pursuers—The Solicitor-General and Mr Gifford. Agent—Mr L. M. Macara, W.S.

Counsel for Defenders—Mr Patton and Mr N. C. Campbell. Agents—Messrs J. M. & J. Balfour, W.S.

The pursuer is an inhabitant of the village of Tayport or Ferryport-on-Craig, and she is also heritable proprietor of certain heritable subjects there, which have been held by her and her predecessors for upwards of two hundred years. In this action she sought to have it declared that a road leading from the west commony of Ferryport-on-Craig and the public highway between Tayport and Newport to the old pierhead of the village is a public right of way and footpath, or otherwise that it is a servitude road over subjects, claimed by or in the occupation and possession of the defenders, which is available to the pursuer as a feu in the village in common with the other feuars. There were also conclusions for declarator that a branch road leading from the said road to a well called the “Strynd Well” was also a servitude road available to the feuars, and that the pursuer and the other feuars have a servi-

tude right of drawing and carrying water from the said well, and also a right of access to the shore of the river Tay between the said well and the old pier of Ferryport-on-Craig, and that the defenders have no right by any operation of embanking, quarrying, or otherwise to interfere with the pursuer's rights, or to intersect their shipbuilding premises, and patent slip and other works so as to exclude the feuars from the enjoyment of their servitude rights. The pursuer further concluded for declarator of servitudes of bleaching and drying clothes and pasturing cattle upon a piece of ground through which the said branch road passes, and that the defenders should be ordained to restore the said roads, bleaching-green, and pasture ground to the same condition in which they were prior to their operations thereon and interference therewith. There is also a conclusion for damages caused by the defenders' blasting operations. The defenders did not dispute on record the servitude rights claimed by the pursuer, but they denied the public right-of-way claimed.

The pursuer proposed four issues, the first having reference to the right-of-way claimed, the second to the servitude right-of-way claimed, the third to the servitude rights of bleaching and pasturing claimed, and the fourth to the claim of damages. The defenders objected to the first two issues being allowed, because under the conclusions of the summons the pursuer could not demand more than the servitude rights, which the defenders did not dispute. They also objected to the third issue that the pursuer was not entitled to found upon the possession of the other feuars in the village (Duke of Hamilton *v.* Aikman 6 W. and S. 64). In regard to the fourth issue, there was an objection that the pursuer was only entitled to it against the defender Derrick, on the ground that the company was not liable for its contractor.

To-day the Court adjusted issues. The first two were rendered unnecessary by the defenders lodging a minute, in which they consented to decree of declarator in terms of the first conclusion of the summons on the line of the road being marked out, for which purpose the Court made a remit to Mr H. J. Wyllie, C.E. The other two issues were adjusted in the following terms:—

“1. Whether for forty years prior to the year 1864, or from time immemorial, the pursuer and her predecessors and authors, as proprietors of the house and ground at the west of Ferryport-on-Craig, and also as proprietors of a house in the east of Ferryport-on-Craig, have possessed and enjoyed servitudes of bleaching and drying clothes, and of pasturing cattle, or either and which of these, over the ground through which the rights of way claimed by the pursuer pass, lying between the high-water mark of the river Tay on the north, and the garden walls of the properties or feus which formally belonged to or were possessed by John Doig, afterwards Robert Pride and spouse, Mrs Euphemia Duncan or Greig, Mrs May Duncan or Mitchell, David Duncan, Euphemia Welsh, and George Clerk, or some of them, on the south, and which ground is delineated on the plan No. 100 of process, and marked with the letters K K K K K K; and whether the defenders in or about the year 1864, and subsequent thereto, have wrongfully interfered with the pursuer's right to the said ground—to the loss, injury, and damage of the pursuer?”

“2. Whether in or about the months of June, July, August, September, October, and November 1864, the defenders—The Tayport Patent Slip Company (Limited), and Robert Derrick, or either and which of them—blasted or caused to be blasted, rock and other materials near the pursuer's property in Ferryport-on-Craig, culpably, recklessly, and in a dangerous manner—to the loss, injury, and damage of the pursuer?”

Damages laid at £500.