had no jurisdiction to entertain any question as to its adequacy, the only competent remedy being an appeal to the Board of Supervision.

An application for parochial relief who had been for three months receiving continually increasing allowances, but who was not on the permanent roll, applied to the Inspector of the Poor of Lanark on the 22d of May for further relief. She then received a shilling, and was told not to come back till the 8th of June, when her case would be considered by the board. On the 31st of May she presented a petition to the Sheriff, setting forth these circumstances, and praying that the inspector should be ordained to award her relief. The Sheriff-Substitute (Dyce) held the question to be one as to adequacy of relief, not of refusal, and therefore that his jurisdiction was excluded, the petitioner's remedy being a complaint to the Board of Supervision under section 74 of the Poor Law Amendment Act. On appeal, the Sheriff (Alison) altered, holding that the allowance of such a small sum for such a long period amounted substantially to a refusal of relief. The inspector advocated.

A debate took place before the Lord Ordinary on the question of law disposed of by the Sheriffs, but his Lordship was of opinion that it was necessary that there should be a proof of the averments of parties. A proof was accordingly taken. After a second debate, the Lord Ordinary returned, on the same grounds, to the interlocutor of the Sheriff-Substitute. His Lordship further held that the petitioner's case was excluded by the judgment of the Court in the case of Johnstone *v.* Black, July 13, 1859, 21 D. 1293.

The petitioner (respondent) reclaimed.

W. A. BROWN for her argued—There are two facts in the case beyond dispute (1) that for a period of three weeks the petitioner was left to depend for her maintenance on a sum of one shilling; and (2) that she never was at any time entered in the permanent, but was throughout placed on the casual roll of paupers. It is not disputed that a pauper, refused relief, has a right of action before the Sheriff, and the Sheriff-Depute was right in holding that the allowance of so small a sum for such a long period is virtually a refusal of relief. The circumstances of the case, therefore, would have given the petitioner the remedy of appeal to the Sheriff even if she had been placed on the permanent roll of paupers. But being only on the casual roll, she is not a poor person having legal rights in the sense of the 33d section of the Poor Law Amendment Act, and therefore the remedy of appeal to the Board of Supervision was not competent to her, because that is only given to those who are on the permanent roll, and thereby have legal rights as paupers. The case quoted by the Lord Ordinary has no application whatever to the circumstances of this action. That was a case where the Court held that the administration of temporary relief did not operate to the effect of destroying a settlement on the ground that the relieving parish did no more than discharge the obligation which was incumbent on the parish where the pauper had a settlement. That case went no length at all to decide that a person receiving temporary relief was entitled to avail himself of the privileges accorded to paupers by the Poor Law Act, who are on the permanent roll.

JOHN MARSHALL, for the respondent, was not called upon.

The LORD PRESIDENT said the case would be continued till the Court had an opportunity of inquiring into the practice of the Board of Supervision.

At advising—

The LORD PRESIDENT—This is an advocation from the Sheriff Court of Lanarkshire. The Lord Ordinary has advocated the cause, and altered the interlocutor of the Sheriff. We have a reclaiming-note before us against that interlocutor. The case arose on an application to the Sheriff by a pauper, or a person in need of relief, on the footing that relief had been refused by the inspector. The application was made under the 73d section of the Poor Law Amendment Act. The question then came to be whether this person was in the predicament of one who had been refused relief, or in the predicament of one whose relief was inadequate. It was contended, on behalf of the petitioner, that she was not in the position of one who had the remedy competent under the 74th section of the Act. It appears that she obtained relief from the inspector for three months, getting monthly allowances during that period. But it is said she was not entered on the regular roll of paupers, and it is contended that not being so, she was not entitled to appeal to the Board of Supervision. It appears that the allowance given to her was not large, and that it was given to her monthly, but it was given to her in advance, and she was told, on the 22d of May, that she should get no more until another meeting of the board. I think it is quite clear that relief which is merely exhausted cannot be called a refusal of relief. I had very little doubt, on a reading of the statute, that this party was not in the predicament of being refused relief under the 73d section. But then it was contended that she could not obtain redress under the 74th section of the Act, because, not being on the permanent roll of paupers, she had not legal rights provided for by the Act. I don't think the fact of being on the roll is the test of having right to this redress, and any omission on the part of the inspector will not debar a party from the remedy competent under the 74th section. I accordingly thought it proper to inquire in regard to the practice, and I have inquired, and I find that a party who has at any time received parochial relief is recognised as a pauper entitled to complain to the Board of Supervision. I think that this practice is in accordance with the principle of the statute, and with reason. I think, therefore, that the Lord Ordinary and the Sheriff-Substitute are right, and that the Sheriff is wrong.

The other Judges concurred.

The judgment of the Lord Ordinary was accordingly adhered to, with additional expenses.

Agents for Advocator—Bell & Maclean, W.S.

Agents for Respondent—Macnaughton & Finlay, W.S.

SECOND DIVISION.

GREEN *v.* SHEPHERD.

Reparation—Infringement of Trade Marks—Interdict. A party brought an action of damages for infringement of trade marks, the summons in which contained a conclusion for interdict. Under this conclusion he asked for *interim* interdict after issues were adjusted. Held that the protection of interdict could not be granted until the pursuer had established his right by action.

In an action at the instance of the pursuer, a chemist in England, and his mandatory in Scotland, against the defender, a washing-powder and table-salt manufacturer in Aberdeen, for infringe-

ment of trade labels, the following issues were adjusted:—

"1. Whether, between 1st January 1865 and 23d April 1866, the defender sold certain powders in packets of 2 oz. or thereby, having printed labels thereon made in imitation of the labels used by the pursuer, with the fraudulent purpose of passing off the said powders as the pursuer's manufacture, whereby persons were induced to buy such powders under the belief that they were powders of the pursuer's manufacture, to the loss, injury, and damage of the pursuer?

"2. Whether, between 1st January 1865 and 23d April 1866, the defender sold certain powders in packages, containing twelve packets or thereby, of 2 oz. each or thereby, such packages having printed labels thereon made in imitation of the labels used by the pursuer, with the fraudulent purpose of passing off the said powders as the pursuer's manufacture, whereby persons were induced to buy such powders under the belief that they were powders of the pursuer's manufacture, to the loss, injury, and damage of the pursuer?"

Damages laid at £1000.

The summons, besides the pecuniary conclusions, contained a conclusion for interdict. A motion was made by the pursuer for interim interdict under the conclusion for interdict.

The Lord Ordinary (Jerviswood) refused the motion *in hoc statu*.

The pursuer reclaimed.

The SOLICITOR-GENERAL and SHAND for him argued—There is nothing incompetent in this motion, although it cannot be instructed by precedent that the course proposed has ever been followed in Scotland. There is no reason why interdict should not be granted under an ordinary action as much as in a process in the Bill Chamber. In England the practice is in accordance with the motion of the pursuer.

GORDON and THOMS, in reply, contended for the incompetency of the motion, and that the pursuer had no right to interdict until his right has been ascertained under the action.

At advising—

The LORD JUSTICE-CLERK—It is necessary to explain formally the grounds upon which our judgment proceeds. In cases of this sort it is a competent remedy for the party at one time to ask an immediate interdict, and at other times not to ask interdict until he has established his whole right by action, including in action a process disposed of on a passed note of suspension. The pursuer here is complaining of a fraudulent invasion of his fair trading privileges, of a deception practised on the public, which has the effect of interfering with his lawful rights, and he stands pretty much in the position of a patentee complaining of an infringement of the privileges secured to him by his patent. The question is, whether he is entitled to immediate protection, or must, in the first place, establish his right to get interdict? When a party thinks he is entitled to immediate remedy he goes to the Bill Chamber with a note of suspension; but if not, he raises an action for establishing his right, or he brings a suspension and interdict without asking interim interdict in the Bill Chamber. After the question has been tried in all this class of cases, it follows necessarily, on the establishment of the pursuer's right, that the pursuer should have an interdict for the future. The question here is, In which of these two positions the pursuer has placed himself. The summons is not raised on the footing that the pursuer is entitled to interim interdict. It is framed on the footing that the pursuer must establish his own right and the fraud of the defenders as preliminary. It must be observed that the form of action, whether it be one of damages or declarator, makes no difference. In cases of copyright, a party does not bring a declarator of copyright, but an action of damages. So here this gentleman brings an action of damages, and I cannot concur with the Solicitor-General that the conclusions of the summons are not in terms of the Act 13 & 14 Vict. c. 36. I think they are consistent with the first schedule appended to the Act. I can say, from my own experience, that after the passing of the Act the universal interpretation put upon the words of the schedule was not that they were limited to a liquid document of debt, but were intended as an illustration of the manner in which the conclusions should be put. I think, therefore, that the conclusions are right, as showing that the action is one of damages. And in the absence of all precedent, I think, without saying whether this motion is incompetent or not, that it ought to be refused.

The other Judges concurred.

The motion was accordingly refused.

Agents for Pursuer—Webster & Sprott, S.S.C.

Agent for Defender—Wm. Officer, S.S.C.

Thursday, July 5.

FIRST DIVISION.

DEMPSEY *v.* E. & G. RAILWAY COMPANY.

Jury Trial—Special Jury. Motion by a party for a special jury *refused.*

This case was set down for trial at the ensuing sittings. It is an action of damages for injury sustained through the alleged fault of a railway company.

The SOLICITOR-GENERAL for the defenders (BLACKBURN with him) moved for a special jury to try the case. There was no particular reason why it should be so tried, except that it was a case against a railway company; but the Court were in use to grant such a motion if made by either party. The railway company were willing to pay any additional expense thereby caused.

CATTANACH for the pursuer opposed the motion.

The Court refused it. There was no reason assigned for it, and as cases to be tried by a special jury had to be set down for a particular day and then tried, the arrangements of the Court for the sittings would be interfered with.

Agent for Pursuer—Alexander Wylie, W.S.

Agents for Defender—Hill, Reid, & Drummond, W.S.

BROATCH *v.* JENKINS.

Fraud — Concealment — Misrepresentation — Relevancy—Issue. (1) Averments of fraudulent concealment which held irrelevant, there being no averment of a duty to communicate. (2) Averments of fraudulent misrepresentation which sustained as relevant. Issue adjusted.

This is an action of reduction of a minute of reference, and an award following thereon. The defender David Jenkins is a writer in Kirkcudbright, and was law-agent for the late Adam Rankine, who incurred various business accounts to him. After Adam Rankine's death, which happened on 1st November 1862, his son and heir-at-law employed the pursuer, also a writer in Kirkcudbright, as his law-agent. In consequence of this employment the pursuer had various interviews with the defender in regard to the settle-