

loss of testimony from other causes, the railway company would be put to serious disadvantage in rebutting the claim now made, I am of opinion that the claim is barred by *mora* and taciturnity, and that the proposed arbitration cannot be allowed to proceed. The interdict already granted will therefore be declared perpetual."

The interlocutor was acquiesced in.

Counsel for Complainers—Lord Advocate (Watson)—Balfour—Strachan. Agent—Adam Johnston, Solicitor.

Counsel for Respondents—Robert Johnstone and Henry Johnston. Agents—Leburn & Henderson, S.S.C.

Friday, January 12.

SECOND DIVISION.

[Lord Craighill, Ordinary.

CUMMINGS *v.* MACKIE AND OTHERS
(SKEOCH'S TRUSTEES).

Issue—Reduction of Deed—Where the Ground of Reduction was that the Witnesses did not see the Subscription.

In an action of reduction of a testamentary deed on the ground that the witnesses did not see its subscription, the pursuers proposed the following issue, which was approved of by the Lord Ordinary:—"Whether A B and C D, the alleged witnesses to the said trust-disposition and settlement, or either of them, did not see the said W S subscribe the same, and did not hear him acknowledge his subscription?" The defenders reclaimed, and proposed to add the words "or that he did not acknowledge it in their presence," on the ground that the testator might have acknowledged by a sign or a nod. The Court *adhered*, holding that the issue as adjusted was in the usual form, and that the words used included any sufficient acknowledgment of his signature by the testator.

Counsel for Pursuers (Respondents)—Nevay. Agent—Robert Broatch.

Counsel for Defenders (Reclaimers)—Guthrie Smith—Gebbie. Agents—Adamson & Gulland, W.S.

Wednesday, January 15.

SECOND DIVISION.

[Lord Rutherford Clark, Ordinary.

LOCHGELLY COMPANY (LIMITED) *v.*
LUMPHINNANS IRON COMPANY.

Trade-Mark—Trade Name—Property in Trade Name—Interdict.

The Lochgelly Coal and Iron Company raised a suspension and interdict against the Lumphinnans Company asking the Court to

interdict them from selling any coal under the name of "Lochgelly coal" except what came from the complainers' pits. It was proved that the Lochgelly Company and their predecessors had for a number of years sold all their coal, though raised from various seams, under the name of "Lochgelly coals;" that it was favourably known in the market, and the only coal known under that name. It was also proved that the Lumphinnans Company were owners of part of a seam called the "Lochgelly splint seam," which extended over a considerable area, part being also owned by the Lochgelly Company. *Terms* of interdict granted against the respondents in these circumstances.

The complainers in this action, the Lochgelly Coal and Iron Company (Limited), carried on business as coal and iron masters at the works of Lochgelly, in Fife. They had acquired in 1872 a lease of the minerals in the estate of Lochgelly, which did not expire till 1903. They stated on record that the Lochgelly collieries had been established at great cost, and had been in operation for upwards of a century; that the coal derived from them had acquired a wide reputation, and was known both in this country and on the Continent under the name of "Lochgelly coal," and was the only coal so known in the market; that it was known by various distinguishing names, *e.g.*, "Lochgelly steam coal," "Lochgelly splint coal," according to its kind and quality, but that they were alone entitled to describe coal by the name of Lochgelly, which the public understood as denoting exclusively coal produced at their collieries. They further averred that for many years they and their predecessors had selected and prepared coal for shipment abroad, and that this coal was favourably known by the name of "Lochgelly coal."

They had recently discovered that the respondents, the Lumphinnans Iron Company—who were lessees of the coals and other minerals in the lands of Lumphinnans adjoining Lochgelly—had begun to sell at home and to ship to the north of Europe and elsewhere coal from their colliery as "Lochgelly coal," and had also issued circulars offering for sale coal procured from their collieries under the name of "Lochgelly coal." This was stated to be an infringement of the complainers' rights, and it was said that the name had been adopted for the purpose of misleading the public.

This note of suspension and interdict was therefore presented, in which the Court were asked "to interdict, prohibit, and discharge the said respondents from designating, advertising, selling, shipping, or exporting, and from causing to be designated, advertised, sold, shipped, or exported as 'Lochgelly coal' any coal worked or raised by the respondents from their works at Lumphinnans or elsewhere, or any coal other than that worked and sold by the complainers at their Lochgelly collieries, and from using the name of 'Lochgelly' either by itself or in combination with other words to designate any coal sold, shipped, or exported by them other than coal worked and sold by the complainers as aforesaid, and from in any manner of way infringing the sole and exclusive right of the complainers to use the name of 'Lochgelly coal' for the purpose of designating the coal wrought by them as afore-