

the said plot of ground, and that he had not at Martinmas, and had not now, any right to enter upon or occupy the same, or to interfere therewith in any manner of way; therefore declared the interim interdict formerly granted to be perpetual, and decerned in terms of the prayer of the petition."

The defender appealed, and argued—(1) In point of fact, the defender was the tenant in possession of the piece of ground for the year from Martinmas 1880 to Martinmas 1881 by tacit relocation; and therefore (2), in point of law, the application for interdict was not, on the authority of *Johnston v. Thomson*, June 9, 1877, 4 R. 868, a competent process for putting an end to his possession; (3) the circumstances as detailed in the evidence did not so clearly indicate the defender's intention to leave the land at Martinmas 1880 as to be sufficient to supply the want of warning or action of removing.

Authority—*Dunlop & Co. v. Meiklem*, October 24, 1876, 4 R. 11.

At advising—

LORD JUSTICE-CLERK—There are two questions for consideration here—First, Whether the landlord agreed to take Dott as his tenant in place of Mackintosh? And this is a question which has an important bearing on the second—Whether the tenant undertook to go away without warning? On this latter question, and quite apart from the first, I am of opinion that it is clear that he did intend to go away altogether, and that he asked his landlord to accept Dott as a *locum tenens* up to the end of that year's possession. It is quite true that in the ordinary case it would not be sufficient to prove by parole proof the want of warning. But this is a case of a regular verbal agreement followed out by both parties, and proved by *rei interventus*. Mackintosh went to Forfar, and understood that so far as there was any obligation after November 1880 he was to be free of the farm. The landlord took Dott as the tenant on payment of £10, and the actings of the parties show that the tenancy was to end on the November following his departure. Whether the landlord absolutely gave up his rent for the possession at Martinmas is another question. I rather think he did, but it is not necessary to decide that, because it is clear that Mackintosh undertook to leave the farm, and actually did so, not intending to return.

Therefore I am of opinion that there is no case for the tenant, who must be taken at his own word; he made his own bargain, which he cannot go back on.

LORD YOUNG—I am of the same opinion, and have no doubt whatever as to our judgment. The facts are quite clear, though two views may be taken with reference to the legal import and effect of the case. There is no question about removing or about warning the tenant to remove. The defender here removed himself. Whether with warning to the landlord or not, he went away, and might have been dealt with by the landlord as one who has deserted his possession. But quite properly and conveniently, when it suits his purpose to remove, he gives his landlord notice, and expresses a hope that he will not resort to legal proceedings on his legal rights against him, but that he will receive Dott for the

rest of the term of the tenancy, and renew the lease to the latter thereafter. The landlord's factor acted cautiously in meeting this request. He will not recognise Mackintosh's freedom, but consents to take Dott in his place till the term of Martinmas, but intimates that Dott must leave at that period unless he enters on another bargain with reference to the farm. Now, I have said there are two views of the position—(1) That Dott was received as Mackintosh's assignee. In that view the case is clear against the defender. (2) That the tenant fitted at his own hand, the landlord not interfering, and allowing Dott to come in for the short remaining period. This also leaves no room for the question about removing him, because he is not there to be removed; and so in either view, on the admitted facts of the case, there is no question of removing or warning, but the only question is of keeping out a man who has removed himself. No doubt Dott has some reason to complain, for it is according to the fact that he expected to be allowed to possess from Whitsunday to Martinmas, and to remain on after Martinmas in possession of the farm, and we find that the defender expresses disappointment at finding on his return from Forfar that this was not to be. However, on the whole matter, I am prepared to affirm the findings of the Sheriff which are true in point of fact, and I do not dissent from his legal view on those findings.

LORD CRAIGHILL concurred.

LORD RUTHERFURD CLARK—I am also of the same opinion. The defender was not in possession, and therefore he was not entitled to warning or notice. I think he chose to go off to Forfar for good and all, and just got Dott to take his place in order to prevent the bad consequences of his irregular removing. He was never in possession of the farm again, and therefore he is not entitled to maintain the plea against his landlord that he was entitled to notice.

The Lords therefore dismissed the appeal, and affirmed the judgment.

Counsel for Appellant—Hay. Agent—W. G. Roy, S.S.C.

Counsel for Respondent—Mackintosh—Low. Agents—Horne & Lyell, W.S.

Friday, January 13.

FIRST DIVISION.

[Lord Rutherford Clark,
Ordinary.

THE PENNYCOOK PATENT GLAZING COMPANY (LIMITED) AND ANOTHER v. MACKENZIE, HARLEY, & COMPANY AND OTHERS.

Patent—Infringement—Combination—Mechanical Equivalent.

The invention claimed under a patent for dispensing with the use of putty in the glazing of station roofs, greenhouses, and similar buildings, consisted in the construction of

astragals, or metal bars, out of strips of sheet zinc folded into a particular shape, into which the glass was to be fixed by means of a strip of sheet lead which overlapped the edge of the glass and pressed it down on to the zinc bar. The lead itself was kept in position by being firmly clipped between two thicknesses of the zinc. The patent was for the combination—neither the use of zinc nor of lead being a novelty in the construction of astragals. In another form of astragal precisely the same mechanical results were produced, but in this case the lead, in place of being clipped between two thicknesses of the zinc, was kept firm by passing almost entirely round an iron bar, which was of a similar shape and otherwise a substitute for the zinc bar in the first system. *Held* that the second form of astragal was not an infringement of the first.

In this case the Pennycook Patent Glazing and Engineering Company (Limited) and Charles H. Pennycook sought to have Mackenzie, Harley, & Company, the British Patent Glazing Company, and Messrs Mackenzie and Harley, the individual partners of both firms, interdicted from infringing certain letters-patent granted to Pennycook, and assigned by him to the Pennycook Company. The respondent Mackenzie was in the employment of Pennycook as book-keeper from about the beginning of June 1878 till 1st January 1879, when he was assumed as a partner by Pennycook, with whom he continued in partnership till about the month of August 1880, when he entered into a copartnery with the respondent Harley.

The invention patented was for "new or improved constructions of self-glazing or glass-fixing sheet-metal bars for window sashes, roof and frame lights for greenhouses, garden frames, vineries, conservatories, sheds, and other structures where glass is required for the admission of light." And the specification bore that the invention related "to the bending or doubling and drawing or shaping of long strips of thin sheet-zinc, or other metal, through shaping dies, or the rolling through between shaping rollers, or it might be partly both, into the form of 'astragals' or glass retaining bars, for the frames of windows, or glass roofs, or like structures for the admission of light, for self-glazing these without the use of putty or other plastic 'fixing,' which sash bars or astragals secure the glass much more easily and efficiently, or tightly, and prevent the admission of water or moisture drops more effectually than by the astragals or modes and means heretofore practised for fixing the glass; at the same time they allow for the free expansion and contraction of the glass and metal without risk of breakage; and which are stronger than astragals heretofore constructed." The body of the astragal consisted of two long strips of zinc or other firm sheet metal. One of these strips was doubled throughout the centre of its length, its two thicknesses being for the most part pressed close together, but with the outer edges forming narrow wings, so that a transverse section of the strip resembled an anchor or the capital letter T inverted and with its arms curved upwards. The second strip was so shaped that it covered entirely the lower or convex side of these arms or wings, and then passing over their edges followed the line of their upper or concave sides almost reaching to the per-

pendicular central portion of the first strip. Upon the concave sides of each of the wings, and underneath the corresponding portions of the second strip, there was then inserted a strip of lead or other ductile metal, which on reaching the central perpendicular portion of the first strip, passed up that portion to its top, one strip of lead being on each side. The whole astragal or compound bar so put together was drawn through the hole in a draw plate of the shape of a section of the complete astragal, so as to compress the curved wings together and grip sheets of lead tightly between the upper and under strips of zinc forming the wings. The whole thus became long rigid astragal bars ready for being cut into lengths to suit the sashes or other frames of the structure to which the glass was to be fitted. The astragals were then fitted into the frames at the desired distances apart to suit the widths of glass which were to be used. The glass rested on the lateral wings of the astragal and its edge touched the vertical central portion. The strips of lead, in so far as above the glass, were then folded down so as to compress the glass firmly against the lateral wings and hold it in position without the use of putty. The specification concluded thus:—"Having thus described the nature of my invention and the manner of performing the same, I have to state that I do not confine myself to the precise details herein described or delineated, but what I consider novel and original, and therefore claim as the invention secured to me by the hereinbefore in part recited letters-patent, is:—*First*, The general construction of shaping and putting together of the parts of zinc or other sheet-metal sash-bars or 'astragals,' for securing the sheet-glass of windows, roofs, conservatories, and other such like structures—all substantially as herein described, in reference to and shown in the accompanying drawings, or any mere modifications thereof. *Second*, The construction of sheet-metal sash-bars or 'astragals,' with doubled over thicknesses of the sheet-metal for gripping strips of sheet-lead, copper, or other like ductile metal, for securing or glazing the sheets of glass on these 'astragals'—all substantially as herein described, in reference to and shown in the accompanying drawings, or any mere modification thereof. *Third*, The construction and use of sheet-metal sash-bars or 'astragals,' with strips of sheet-lead, copper, or other like soft or ductile metal, for folding down over and securing or glazing the sheet-glass to such 'astragals,' without putty or other cement for windows, roofs, conservatories, or other such structures for the transmission of light—all substantially as herein described, in reference to and shown in the accompanying drawings, or any mere modification thereof."

The astragal which was alleged to be an infringement of this patent was likewise the subject of letters-patent which were subsequent in date to Pennycook's. In it, in place of zinc or other sheet-metal, a solid iron bar was used, but this bar was also shaped so that its transverse section resembled an anchor, and the glass was held in position by an overlapping sheet of lead, which pressed it down on to the arms of the bar, exactly as in Pennycook's system. The lead, however, in place of being gripped between the two zinc folds of the arms, consisted of a single sheet which was kept firm by passing round the entire surface of the iron bar, except the top of

the central vertical portion, where the two edges of the sheet almost met; and, of course, when the glass was fitted in so much more of the vertical portion of the iron was laid bare as had been covered by the lead used to fix the glass.

The respondents averred, *inter alia*, that "the alleged invention specified and described in the letters-patent founded on had been publicly exhibited by the complainer Charles Hill Pennycook, and was publicly known in Great Britain prior to the date of the said letters-patent. It was so publicly exhibited by the complainer on Glasgow Green, at the exhibition of the Glasgow Agricultural Society, on 7th, 8th, and 9th May 1879." And they pleaded—"(2) The alleged letters-patent founded on by the complainers are null and void or invalid, because . . . publicly known prior to the date of the said letters-patent.

. . . (3) Assuming the letters-patent founded on to be valid, the note should be refused, because the respondents have not infringed the said letters-patent."

On a proof the following was the most important evidence with reference to the first of the above-quoted pleas-in-law. The complainer Pennycook stated in cross-examination—"There was an exhibition of the Glasgow Agricultural Society held in Glasgow Green in May 1879. I made exhibits at that exhibition. Amongst the exhibits made on that occasion by my firm were astragal bars of various drawn materials. There were none exhibited which fell under the specification of the letters-patent, which I afterwards obtained. There was nothing showing the combination of zinc or other hard metal with soft metal. I believe my invention was in process of being made at that time, but I do not think any of it had been made in a state in which it could be exhibited. (Q) Were none of those patterns which have been shown to you, as produced under your letters-patent, shown to the public at that exhibition?—(A) There were none in a finished state. (Q) In what respect were they unfinished?—(A) They were in a semi-form; the thing was not matured." The respondent Mackenzie being at the time to which his evidence refers a member of the complainer's firm, stated with reference to an astragal of the complainer's system—"We exhibited these to every person to whom we could get an opportunity of showing them. It was Mr Pennycook who principally did so. He gave away a great many specimens. He explained the novelty most completely. (Q) To whom?—(A) In a show where thousands were passing. I cannot individualise, but he explained it to all to whom he had the opportunity of doing so. No. 61 is a handbill of Pennycook, Sons, & Co., which was printed specially for the show. The 'self-glazing astragal bars' there mentioned refer to the bars which Pennycook subsequently patented. The handbill is headed 'Charles Hill Pennycook, patentee.' He was a patentee at the time, but not of astragal bars. He explained to me his reason for putting in the word 'patentee,' viz., that it would blind the eyes of the public to the fact that the astragal was not patented when we exhibited it." In corroboration the respondents produced two witnesses who spoke to seeing in Pennycook's possession at the show astragals of the kind he afterwards patented. One of these witnesses only

could state that he heard Pennycook describe the nature of his invention.

The Lord Ordinary (RUTHERFURD CLARK) replied the reasons of suspension and refused the note.

His Lordship added this note:—"The patent is assailed on various grounds. But after the proof it was evident that the only important challenge depended on the allegation that before the provisional specification was lodged the patentee had himself published the invention by exhibiting the patented articles at the show of the Glasgow Agricultural Society on 7th, 8th, and 9th May 1879. In the opinion of the Lord Ordinary the allegation has been proved. If the witnesses for the respondents are speaking the truth, it is plain that the patent is bad; and the Lord Ordinary sees no reason to doubt either their accuracy or their honesty.

"After the evidence of the respondents was closed, the complainers asked for an adjournment in order to lead proof in replication. But considering that they had received explicit notice on record, and that they had entered on the point in their evidence-in-chief, the Lord Ordinary refused the motion. He did not think it right that the complainers should have an opportunity of seeking out the evidence with which they should have been prepared at the beginning of the case.

"If the Lord Ordinary is right so far, there is, of course, an end. But even if the patent were valid, he is of opinion that there has been no infringement. The letters-patent are granted for a 'New or improved construction of self-glazing or glass-fixing sheet-metal bars for window sashes, roof and frame lights for greenhouses, garden frames, vineries, conservatories, sheds, and other structures where glass is required for the admission of light.' The specification sets out that the 'invention relates to the bending or doubling and drawing or shaping of long strips of thin sheet zinc or other metal . . . into the form of astragals, or glass retaining bars for the frames of windows . . . for self-glazing these without the use of putty, &c. It proceeds to state that the astragal is made by bending two pieces of sheet metal into such a form as that they fit into one another. One of them is so constructed as to furnish a 'clip' to receive and grip the sheet lead, which is folded down on the glass after it is laid on the astragal. In this way putty is dispensed with.

"The claiming clauses are in accordance with the title and description. They claim, 1st, the general construction of sheet-metal sash bars or astragals; 2nd, the construction of sheet metal sash bars or astragals with the arrangement for gripping strips of sheet lead or other ductile metal, or, in other words, the 'clip'; and 3d, the construction and use of sheet-metal sash bars or astragals with strips of sheet lead or other ductile metal. They include the construction of the sash bars with or without the clip, and the use of sheet lead or other ductile metal with such sash bars. But they do not comprehend any other sash bars than those which are made of sheet metal. If they did they would go beyond the letters-patent, which are granted for 'sheet-metal bars' only.

"The astragal or sash bar which, as made by the respondents is formed not of sheet metal but of solid iron rolled out into the requisite shape.

It is constructed in a single piece, being or at least resembling what is known as a T iron bar. The bar thus formed is surrounded with a closely-fitting envelope of sheet lead. It is placed *in situ* with the head of the T undermost, so that the wings on either side of the leg support the glass. The lead which lies along the leg of the T is folded down on the glass.

“Special advantages are claimed for this form of construction, both as regards the length and the strength of the bars. The Lord Ordinary is disposed to think that those advantages are attained; but whether they are or not, he cannot hold that the respondents’ bars are a contravention of the complainers’ invention, which consists in the construction of sash bars from the peculiar form which is given to strips of sheet metal. It is said that they are a mechanical equivalent. But it seems to the Lord Ordinary that there is no place for such a doctrine here. The patent includes no other bars than sheet-metal bars, and therefore excludes every other form. To hold that it comprehends bars rolled from solid iron would be to extend it to bars which the patentee had not indicated as suitable for his purpose, and to bars which, so far as appears from the specification, could not be availed used. Nor is the use of a soft metal, as a substitute for putty or other plastic material, the subject of a separate claim. It is only claimed in connection with the bars of the specified construction.”

The complainers reclaimed.

At advising—

LORD PRESIDENT—The pursuers’ patent is for a “New or improved mode of construction of self glazing or glass fixing sheet metal bars for window sashes, roof and frame lights, for green-houses, garden frames, vineries, conservatories, sheds and other structures where glass is required for the admission of light;” and the claim is stated under three heads, the first being “The general construction or shaping and putting together of the parts of zinc, or other sheet metal sash bars or ‘astragals’ for securing the sheet glass of windows, roofs, conservatories, and other such-like structures, all substantially as herein described in reference to, and shown in the accompanying drawings, or any mere modifications thereof;” “*Second*, The construction of sheet metal sash bars or ‘astragals’ with doubled over thicknesses of the sheet metal for gripping strips of sheet lead, copper, or other like ductile metal, for securing or glazing the sheets of glass on these ‘astragals,’ all substantially as herein described in reference to, and shown in the accompanying drawings, or any mere modifications thereof;” “*Third*, The construction and use of sheet metal sash bars or ‘astragals’ with strips of sheet lead, copper, or other like soft and ductile metal for folding down, over, and securing or glazing the sheet glass to such astragals without putty or other cement, for windows, roofs, conservatories, or other such like structures for the transmission of light, all substantially as herein described in reference to, and shown in the accompanying drawings, or any mere modification thereof.” Now, the object of the patent is what may be called self-glazing—that is to say, the fixing down of glass for lighting purposes in windows or roofs without the use of putty or any similar material, and the manner generally in

which this is to be attained is by the use of an “astragal” composed of sheet metal, and the use in combination with that of ductile metal which is to come down upon the glass and secure or fix it. The way in which the claim is stated in the three heads to which I have referred is quite the same in each as regards its scientific principles, and the object of doing so is to bring each of these into greater prominence—that is to say, the first head gives a general description of the construction of the astragal; the second brings out prominently that one of the essential features is gripping by means of a mode in which sheet metal is to be fixed by means of a clip or grip for holding one edge of the ductile metal; and the third brings into prominence the folding down of the ductile metal upon the top of the glass, so as to fix it without putty.

Now, it is clear and not disputed that the use of sheet metal in the construction of an astragal is nothing new, and it is equally clear that the use of sheet lead or other ductile metal for the purpose of fixing glass in windows or the like is a common thing, and these are the only materials used in this construction, and neither of them being new, it follows clearly that the patent is for a combination of these two things to produce a particular result, that result being that the glass is fixed in a secure and efficient way, and so as to prevent the admission of water and rain. The patent, therefore, is for a combination of sheet metal, treated in a particular way, with ductile metal to attain the object in view.

That being pretty clearly the true description of the patent, its construction or use is very well exemplified by the small production in the process, which shows that in order to attain the end which the patent had in view what is absolutely necessary is that that sheet metal should be so treated in point of shape and construction as that there should be a clip on each side which shall firmly and securely hold one edge of the sheet metal, the other edge of which is to come down upon the glass and fix it. It appears to me, therefore, that unless the combination which is thus described has been used by the respondent in the present case, the complainer has not made out his allegation of infringement, and the short point therefore on this case is, whether it has been proved to have been used by the respondent, and whether the construction represented by the specimen is really a thing within the description of the patent?

Now, the points of difference are very important and very clear. In the first place, the alleged infringer does not show that sheet-metal is used in the construction of his astragal, but in place of that he uses solid iron—what is commonly known as T iron in point of shape, with this variation only, that the top of the T is bent upwards on each side. If we take the position in which the point stands when it comes to form the astragal, then in place of there being any treatment of sheet-metal in such a way as to form a clip for holding the ductile metal, the astragal is of such a character that it would be physically impossible to produce a clip. It is composed of such material as cannot be bent like sheet-metal for the purpose of establishing that clip; and the ductile metal, in place of being held in position by means of clips, is fixed and held in position by being wrapped entirely round the solid

metal. It seems to me, from the specimen which I have in my hand, that that is a mode of fixing which is quite as secure and firm as that which is effected by the clip in the patent of the complainer with which we have to deal in this process. Therefore it is quite clear that this astragal of the respondent does not answer the description of the complainers; and it seems to me further, that it not merely fails to answer the description of the complainers' patent in so far as words are concerned, but that in substance and reality it is quite a different thing. Mr Pennycook, the complainer, puts this very shortly and very clearly in the commencement of his cross-examination, in which he says—"What I claim as new in my patent is the clipping of the soft metal by the hard metal, and the folding down of the soft metal—nothing more. These are the two material points of it, in my estimation." Now, it is just in that very particular, which states the substance of the invention, that the astragal of the respondent seems to me to differ entirely. I am therefore of opinion, upon that short view of the case, that the allegation of infringement is not made out.

And that being so, I confess I am not very willing to enter upon the consideration of the other ground of judgment which the Lord Ordinary assigns in the note to his interlocutor. I am most unwilling to do so, because I think the evidence is not very satisfactory. I am not going to enter into the question as to whether the allegation of prior publication has been made out. The publication alleged is a publication in a show-yard, which was full of people, and where it is stated that there were many persons looking on while the patentee's invention was being described by himself. The evidence before us is nothing like what ought to have been before us, on the one side or on the other. It may perhaps come to pass that that question may be tried by somebody else; but in the meantime, I think it better to abstain altogether from dealing with that part of the case—the respondents' defence being sufficiently established upon the simple ground that he is not infringing the complainers' patent, whether it is bad or good.

LORD DEAS—I have had some little difficulty as to the grounds of judgment in this case; but on the whole I agree in the grounds stated by your Lordship, and I refrain from saying anything farther than that I do so.

LORD MURE.—I adopt the same view.

I do not think it is necessary to go into the first question raised in the Lord Ordinary's note, viz., the alleged publication before the actual date of the patent, because that is not necessary for the disposal of the case,

Upon the other ground, viz., the question of infringement, I am very clearly of opinion that there is here no infringement of the complainers' patent, and that no infringement has been proved. I think the view of the Lord Ordinary on that point is stated very clearly and very shortly, and puts very well the nature of the case that is raised for consideration, and the grounds for arriving at what I consider a satisfactory judgment; and these having been yet more fully and distinctly explained by your Lordship in the chair, I have nothing to add, because I think these show clearly

the grounds on which our judgment ought to proceed.

LORD SHAND—I am entirely of the same opinion.

It appears to me to be quite clear that the essential feature of the complainers' patent is that sheet metal shall be used in the formation of the astragal which is the foundation of his invention. That, I think, is clear from the terms of the specification, throughout every line on which sheet metal is mentioned as an essential. In the title of the patent the invention is described as a "New improved construction of self-glazing or glass-fixing sheet-metal bars for window sashes," and so on, and in which by his claim the inventor is careful to state that it is of sheet metal that his astragal must be formed. That might not be enough, but there is another circumstance which is material upon this point, and that is that there is a distinct reason obvious throughout the whole of the patent for his mentioning sheet metal as an essential in his invention, and that reason is that metal of that kind which admits of clipping its sides, such as lead or ductile metal, is one of the leading points in the complainers' apparatus. That is evident, not only from the frequent repetition throughout the patent of the fact that the sheet metal is to be so formed as to create a clip upon the ductile metal; but there is this further circumstance, that from one of the illustrations, of which there are a number in the sheet of engravings appended to the letters-patent, a model of which was shown to us, and which is said to come most closely to the respondents' patent, it is quite clear that sheet metal is indispensable to the invention as there shown, because it is to be used in the astragal for the purpose of folding over and clipping upon the lead or ductile metal, which is the other part. Now, taking that to be so, I am clearly of opinion with your Lordships that there is here no infringement. The metal used by the respondent for his astragal is not sheet metal, but bar iron, and that which forms the basis of his astragal is iron, not with any clip folding over the ductile metal in any way, but with the ductile metal rolled over the iron substance and forming a cushion on which the glass rests. The mechanism of this astragal is complete. It is clear upon the evidence, I think, that in some very material respects this is an advantage over the complainers' patent—I mean that it gives greater strength in large structures where strength is needed, while it is equally good for holding glass without clipping. If one were considering the utility of these two inventions, my opinion would rather be this, that in some circumstances the invention of the complainer might be preferred, while in others it is equally clear that the invention of the respondent is best, applicable to the purpose which each has in view. There is one observation which I make in passing, and it is this, that it may be quite true, and I rather think it is quite true, that the respondent, being in business with the complainer, and, if I mistake not, living in family with him as his son-in-law, got his ideas from the complainer while he was working at his invention. But although that may have been what led him to devise the astragal which he has patented, nevertheless it appears to me that he has devised a

thing essentially different from the combination for which the complainer took out his patent, and so, I think, there is here a failure on the part of the complainer to prove that the device of the respondent is an infringement on his patent.

On the other point I shall only say, with regard to the complainers' application to be allowed to lead further evidence as to the alleged publication of this invention at the exhibition in Glasgow, that I am satisfied there were grounds for allowing further proof, and I agree with your Lordships that the subject has not been dealt with in the proof with that precision which the parties were bound to exercise in leading evidence, and I am struck that the complainer, when under examination as to the alleged exhibition, was allowed to leave the witness-box without stating what was the nature of it, what was exhibited by him, and to whom it was shewn. It would have occurred to me to bring that out with some distinctness, and not to leave it upon a general answer, like what we have here, and if we had had that before us we might have been able to get materials for arriving at a proper knowledge of the true state of the facts and thus enabled us satisfactorily to dispose of the case, not upon the question of infringement only, but also on the question of publication. But the materials not being satisfactory, I think it better that our judgment should proceed upon the point of infringement alone.

The Court recalled the interlocutor of the Lord Ordinary, sustained the third plea-in-law for the respondents, repelled the reasons of suspension, and refused the interdict.

Counsel for Reclaimers (Complainers)—Guthrie Smith—Alison. Agent—John Gill, S.S.C.

Counsel for Respondents—Pearson—Thornburn. Agent—A. Wallace, Solicitor.

Friday, January 20.

FIRST DIVISION.

CRAIG AND OTHERS, PETITIONERS.

Succession—Vesting—The Presumption of Life Limitation (Scotland) Act 1881 (44 and 45 Vict. c. 47), sec. 4 and sec. 8.

A man left this country for America, and was last heard of "upwards of thirty years ago." A petition, under section 4 of the above-cited Act, by his next-of-kin for authority to make up title to and divide his share of a succession, which opened twenty-three years after his disappearance, was refused, in respect that in terms of section 8, there being no presumption arising from the facts of his having died at any definite date, he must be held to have died seven years after he was last heard of, and so to have predeceased the opening of the said succession.

By the Presumption of Life Limitation (Scotland) Act 1881 (44 and 45 Vict. c. 47) it is provided, section 4, that—"In the case of any person who has been absent from Scotland, or who has disappeared for a period of fourteen years or upwards, or who has not been heard of for fourteen

years, and who at the time of his leaving or disappearance was possessed of or entitled to moveable estate in Scotland, or who has since become entitled to moveable estate there, it shall be competent to any person entitled to succeed to the said absent person in such moveables to present a petition to the Court setting forth the said facts; and after proof of the said facts, and of the petitioner's being entitled as aforesaid, and after such procedure and inquiry by advertisement or otherwise as the Court may direct, the Court may grant authority to the petitioner to make up and to receive and discharge, possess and enjoy, sell or dispose of, the said moveable estate in the same manner as if the said absent person were dead." Section 8 provides—"For the purposes of this Act, in all cases where a person has left Scotland, or has disappeared, and where no presumption arises from the facts that he died at any definite date, he shall be presumed to have died on the day which will complete a period of seven years from the time of his last being heard of, at or after such leaving or disappearance."

William Craig, residing in Glasgow, died childless and testate on 27th September 1874. His widow and one of his sisters were confirmed executrices-dative on his moveable estate, which amounted to £8039, 14s. 6d. The present application was made by them and by two other sisters and a brother of the said William Craig, and also by the children of a deceased brother, the petitioners alleging themselves to be the sole next-of-kin of the deceased, for authority to make up title to, receive, and divide, in terms of section 4 of the above-cited Act, the share of the said William Craig's moveable estate (amounting to £786, 15s. 9d.), which fell on his death, as they averred, to Robert Craig, another brother of the said William Craig.

The petitioners averred that Robert Craig "left this country for New York in the end of the year 1844 or beginning of the year 1845. Shortly after his arrival there he wrote a letter to his brother the said William Craig, or to his father (now deceased). That letter long ago went amissing, and cannot now be found, and since its receipt nothing further has been heard from the said Robert Craig. Upwards of thirty years ago he was seen in St Louis; but since then he has not been heard of. At the time he sailed for America he would be about thirty-seven years of age." They further averred—"In order if possible to trace the said Robert Craig, the executrices of the said William Craig caused advertisements to be inserted in the various newspapers enumerated in a statement herewith produced, of the dates, and in the terms therein set forth. But no authentic information has down to the present date been obtained regarding the missing man. That the petitioners are the sole next-of-kin of, and the only persons entitled to succeed to, the said Robert Craig in said moveable estate."

The Court ordered the petition to be intimated on the walls and in the minute-book, and to be advertised once in the newspapers in which advertisement had formerly been made as above stated, and they allowed the petitioners a proof on commission. The result of that proof was substantially to establish the petitioners' averments as above.

Counsel for the petitioners was thereafter heard on the petition and proof. He argued—The