nary sense of the term—that is to say, to set at nought the orders of the Court wilfully. It therefore rather appears to me that a small fine is the sentence most suitable to follow upon the conviction which we have just pronounced, and I should propose to your Lordships a fine of £5.

Lords Mure, Shand, and Adam concurred.

The Court found the respondents guilty of breach of interdict and fined them £5.

Counsel for the Complainer—Ure. Agents—Thomson, Dickson, & Shaw, W.S.

Counsel for the Respondents—A.S.D. Thomson. Agent—J. Stewart Gellatly, S.S.C.

Thursday, January 21.

SECOND DIVISION.

[Sheriff of Stirlingshire.

M'KECHNIE *v.* COUPER.

Reparation—Carriage—Obligations of Driver—Damages.

A man walking on a road was injured through being struck by a spring cart which overtook him, and which, though it was dark at the time, was being driven rapidly and carried no lights. The injured man did not hear its approach owing to deafness. *Held* that the owner of the cart was liable in damages for the injury.

James M'Kechnie, a labourer residing in Torrance of Campsie, left his house at about five o'clock on the morning of the 8th February 1886 in order to proceed to his work in Glasgow. The morning was dark and foggy, and the roads were wet and slippery in consequence of a thaw following upon a severe frost. While he was walking towards Glasgow, and was on the part of the roadway on which carriages pass, he was knocked down by a milk cart which belonged to Thomas Couper, a farmer at Lennoxtown, and which he did not, owing to deafness, hear coming up behind him; he was injured in the left leg, suffered considerable pain, but lost no wages by the accident, as his employers paid him in full. He raised this action against Couper for £30 damages, on the ground that the injury was caused by the fault and negligence of the lad driving the cart, who was, the pursuer alleged, driving rapidly and without lights, and keeping no look-out.

The defender denied these averments.

After a proof, in which it was proved that the cart carried no lights and was being rapidly driven when the collision occurred, the Sheriff-Substitute (Mitchell) found for the pursuer, assessed the damages at £10, and found the defender liable in the ordinary Sheriff Court expenses, though the sum recovered was within the limit of what might have been recovered in the Small Debt Court.

On appeal the Sheriff (Muirhead) adhered, but assessed the damages at £5, and found the pursuer entitled only to Small Debt Court expenses.

The pursuer appealed, and argued that the damages awarded him were inadequate. He quoted on the question of fault—*Gibson* v. *Molloy*, March 20, 1879, 6 R. 890.

The defender maintained that no fault was proved.

At advising—

Lord Justice-Clerk—I have read the evidence here, and I must fairly own that I do not feel much sympathy with the argument which we have just heard from the defender. I am of opinion that the pursuer was doing nothing but what he was perfectly entitled to do when the accident happened. The driver of the milk cart was bound to take sufficient precautions to avoid all passengers on the middle of the road, where they were entitled to be. It is quite clear that he did not take such precautions, because he ran up against the pursuer.

There is no doubt as to the mutual relations to one another of drivers of wheeled vehicles on the high road and passengers on it. We have frequently before now had occasion to consider them. There is an obligation incumbent on the former to take care not to come into contact with the latter. If the fault of the latter leads to the accident, that is a different matter. But the primary obligation is such as I have stated. Here the driver of the cart was in the wrong. If he could see the way clearly before him, probably there would be no necessity for him to carry lights, but if the morning was too dark for this, then he was bound to have carried lights.

The Sheriff-Substitute found the pursuer entitled to £10 of damages, but the Sheriff reduced the sum to £5, and also found the pursuer entitled to Small Debt expenses. I am entirely unable to understand the ground on which he made this alteration. I am of opinion that even the Sheriff-Substitute has been too niggardly in his allowance of damages, and in that view and on the whole matter I propose that we find the pursuer entitled to £20 and his expenses in both Courts.

Lords Young, Craighill, and Rutherfurd Clark concurred.

The Court pronounced this interlocutor—

"Find in fact (1) that early on the morning of 8th February 1886 the pursuer, while walking on the public road between Torrance of Campsie and Glasgow, on his way to his work, was knocked down and severely hurt by a cart belonging to the defender; (2) that he was so injured by the fault and negligence of the defender's servant in charge of the cart in driving it rapidly in the dark without any precaution taken for the safety of persons using the road; (3) that the accident was not caused by any fault or negligence on the part of the pursuer: Find in law that the defender is liable to the pursuer in damages for the injury sustained by him as aforesaid: Therefore sustain the appeal, recal the interlocutor of the Sheriff-Substitute and the interlocutor of the Sheriff: Assess the damages at £20 sterling: Ordain the defender to make payment of that sum

to the pursuer: Find the pursuer entitled to expenses in the Inferior Court and in this Court," &c.

Counsel for Pursuer — Salvesen. Agents — Gill & Pringle, W.S.

Counsel for Defender—Darling—Guy. Agents —Carment, Wedderburn, & Watson, W.S.

Friday, January 21.

FIRST DIVISION.

[Lord M'Laren, Ordinary.

MAGISTRATES OF GLASGOW (AS WATER COMMISSIONERS) *v.* FARIE.

Property—Reservation of Minerals in Disposition to Public Body acquiring Land under Statutory Powers—Minerals—Seam of Clay—Waterworks Clauses Act 1847 (10 *and* 11 *Vict. c.* 17), *sec.* 22, *et seq.*

Held (Lord Mure *diss.*) that a seam of clay of merchantable quality was a "mineral" within the meaning of the Waterworks Clauses Act 1847.

Water Commissioners acquired from the proprietor of lands a part thereof for the purpose of their undertaking, "reserving" to the proprietor "the whole coal and other minerals in said lands," in terms of the Waterworks Act 1847. They formed reservoirs and other works on the ground. *Held* (Lord Mure *diss.*) that the proprietor was entitled, in virtue of the reservation, to work in the ordinary manner a seam of clay in the lands so acquired, whether such working should be injurious to the works of the Commissioners or not, and just as if they had not acquired the surface from him, unless they were willing to make compensation to him for its value in terms of the Waterworks Clauses Act 1847.

In 1871 the Magistrates of Glasgow, as Commissioners under the Glasgow Corporation Waterworks Act 1855, after serving notices for the compulsory taking of lands from Mr Farie, proprietor of Farme and Westthorn, Lanarkshire, and entering into an arbitration with him as to the price, came to an agreement with him as to the price without the necessity of proceeding with the arbitration, and acquired for £11,000, pursuant to their Amendment Act 1866, certain portions of lands amounting in all to 20 acres 3 roods and 29 poles, part of Westthorn. The disposition by Mr Farie contained a clause—"Excepting always and reserving to me and my foresaids the whole coal and other minerals in said lands in terms of the clauses relating to mines in the Waterworks Clauses Act 1847." The Commissioners were duly infeft.

The land was required for reservoirs, and two were constructed, partly by excavation into the clay of which the sub-soil consisted. Other works were also formed, and about 6 acres remained in grass to be used for supplementary reservoirs when required.

Mr Farie of Farme and Westthorn, the defender of this action, was the successor of the disponer of the lands. He began to work the clay in the remaining lands belonging to him for brickmaking. In so doing he worked by "open cast," *i.e.*, by open quarry into the seam, and not by mining, and brought his workings to about 30 feet from the lands acquired by the Water Commissioners. In March 1885, through his law-agents, he intimated to the Commissioners that he had for some time been working a seam of clay in a part of his lands of Westthorn immediately adjoining the ground sold by his predecessor to them, and that in virtue of the reservation before referred to he was desirous of working the seam of clay under the ground so acquired by them, and called upon them to state whether they would avail themselves of their right to prevent his working the said seam by making compensation to him therefor in terms of the Waterworks Clauses Act 1847, 10 and 11 Victoria, chapter 17, particularly section 22 thereof.

The Commissioners maintained that he had no right to work the clay beneath the surface of their lands, or to compensation for refraining from doing so, contending that clay was not within the reservation; that the clay was essential to the purpose for which they had acquired the lands, as the pursuers' predecessor knew. They raised this action to have it declared that they were the "proprietors of the seam of clay lying in or upon the said pieces of ground, and that the said seam of clay is not comprehended or included in the clause of reservation contained in the said disposition of the whole coal and other minerals in said lands in terms of the clauses relating to mines in the Waterworks Clauses Act 1847, nor comprehended under or included in any other words or clause of reservation in the said disposition, but is the absolute property of the pursuers, and it ought and should be found and declared by decree foresaid that the defender is not entitled to work or win the said clay contained within the boundaries of the pieces of ground disponed to the pursuers as aforesaid either by mines or quarries, open cast or otherwise, or by any means whatever; and the defender ought and should be interdicted, prohibited, and discharged accordingly from entering upon or within the said lands acquired from him by the pursuers for the purpose of working or winning the clay therein, and from opening up the surface of the pursuers' said lands and digging quarries thereon, and from making or using any mines, quarries, or other works either above or below the surface of the ground thereof for the purpose of working or winning the said clay."

They pleaded—"(1) The pursuers being proprietors of the lands disponed to them by the foresaid disposition, and the said seam of clay not being within the clause of reservation therein contained, are entitled to decree of declarator and interdict, with expenses as concluded for." They also pleaded in the record, as amended in the Inner House, as mentioned *infra*—"(2) It having been well-known to the defender's author that the undisturbed possession of the clay in the land acquired by the pursuers from him was essential to the purpose for which the purchase was made, and the clay having been included in the subjects sold by him, the defender is not entitled to adopt the proceedings now complained of. (3) *Separatim*, the exercising of the claim made by the defender to work the