Thursday, June 26.

SECOND DIVISION.

[Lord Trayner, Ordinary.

THE HIGHLAND RAILWAY COMPANY *v.* THE GREAT NORTH OF SCOTLAND RAILWAY COMPANY.

Railway—Agreement—Implement—Arbiter—Award.

The Highland Railway Company and the Great North of Scotland Railway Company agreed that the division between them of the receipts from certain passenger traffic should be in accordance with the decision of B. He decided that the division between the companies should be made "according to their respective mileage and under the rules of the clearing-house."

The parties differed as to the meaning and effect of this decision, and, under the protest of the Great North of Scotland Railway Company, the award was submitted for construction to G. He decided that B's award would be carried out "by giving to each company their mileage proportion not exceeding in respect of passenger traffic the local passenger fares." The Highland Railway Company sought to have the Great North of Scotland Railway Company ordained to implement G's award by concurring with them in instructing the clearing-house to divide the receipts according to their respective local fares.

Held that the action was irrelevant, as according to the agreement of parties the question had been entirely left to B's decision, and as no new agreement referring the matter to G was alleged to exist.

On 18th June 1886 an agreement was entered into between the Great North of Scotland Railway Company, of the first part, and the Highland Railway Company, of the second part. Article 1 of the agreement provided—"This article applies to traffic passing in either direction between any place south of Grange South Junction (excluding Grange South Junction) on the one hand, and any place west or north of Elgin (excluding Elgin) or south of Forres (including Forres) on the other hand, and carried by any of the following routes, viz:—(*a*) *via* Keith, Mulben, and Elgin, in this article called 'the Highland route'; (*b*) *via* Keith, Craigellachie, Rothes, and Elgin, (*c*) *via* Grange, Portsoy, Garmouth, and Elgin—in this article called 'the Great North route.' In dividing the receipts arising from the traffic covered by this article it is agreed that after deducting the usual clearing-house terminals arising thereon, and also paid-ons, paid-outs, proportions paid or due to other companies, the residue of the gross receipts (without any allowance for working expenses) shall be divided into two moieties, of which one moiety shall be deemed to be receipts in respect of traffic which has been carried *via* the Highland route, and the other moiety shall be deemed to be receipts in respect of traffic which has been carried *via* the Great North route, and such moieties shall be divided between the two companies respectively in accordance with the decision of James Beale (the arbitrator appointed by the agreement between the two companies, of even date herewith), one moiety as if it arose from traffic carried *via* Keith, Mulben, and Elgin, and the other moiety as if it arose from traffic carried *via* Keith, Craigellachie, Rothes, and Elgin."

This article applied to the through communication from Aberdeen to Inverness. The Great North of Scotland line ran from Aberdeen to Keith, and then by a loop-line from thence to Elgin by Craigellachie, &c. The Highland line ran from Inverness to Elgin, then by a straight line to Keith, so that there could be no through traffic from one place to the other except by passing over both lines, but the journey from Inverness to Keith was shorter by the Highland Railway than by the Great North of Scotland line.

It was provided that for the due observance and carrying out of the provisions of the agreement a committee should be appointed, consisting of the chairman and three directors of each company, and that such committee should meet from time to time as might be mutually arranged, to consider any matters connected with or arising out of the agreement.

By article 27 it was provided that "any difference which may from time to time arise between the companies parties hereto in regard to the true intent and meaning or construction of this agreement, or in regard to any matter or thing arising out of this agreement, or in regard to the arrangements and provisions for carrying out the same, shall from time to time, so often as any such difference shall arise, be, and the same is hereby submitted and referred to the joint committee, and failing their agreement, to James Grierson, Esquire, general manager of the Great Western Railway, London, whom failing William Wainwright, Esquire, general manager of the Glasgow and South-Western Railway, Glasgow, as sole arbitrator, or, in the event of death or incapacity, to an arbitrator to be appointed by the joint-committee, or failing agreement, by the Board of Trade.'

By an agreement to refer, entered into between the two companies, of the same date as the agreement above recited, the said companies submitted to the decision of James Beale, Esquire, solicitor, Great George Street, Westminster (arbitrator referred to in the first article of the previous agreement), the following questions—"1. Whether the proviso to section 82 of the Highland Act 1865 (providing for facilities and interchange of traffic between the two companies) applies to traffic exchanged under the Act of 1884" (the Great North Act) "between the two companies at Elgin, or whether the receipts of such traffic are to be divided between the two companies respectively in accordance with their re-

spective mileage, and under the rules of the clearing-house?" and "2. If the proviso applies at all, does it apply to anything other than competitive traffic passing *via* Aberdeen?"

On 9th July 1886 Mr Beale gave his award in the following terms—"Now I hereby award and determine that the proviso of section 82 of the Highland Railway Act 1865, printed on the fourth page of and referred to in the above-written submission, does not apply to traffic exchanged, under the Great North of Scotland Railway Act 1884, between the two companies at Elgin, and I further award and determine that the receipts of such traffic are to be divided between the two companies respectively in accordance with their respective mileage, and under the rules of the clearing-house."

A dispute arose as to the meaning and effect of Mr Beale's decision.

At a meeting of the joint-committee on 19th October 1886 the Highland Company required the Great North Company to accept as their proportion the local fare on all passenger traffic booked between the systems in accordance with the rules of the railway clearing-house. The committee differed, and the Highland Company intimated an appeal to the arbitrator.

The question along with others was submitted to Mr Grierson. The Great North Company protested against any reference to Mr Grierson of this matter on the ground that Beale had been appointed the sole arbiter in the matter, but took part in the proceedings before the arbiter.

On 16th January 1887, after hearing parties, Mr Grierson issued this award—"... The award of James S. Beale, Esquire, which determined that the receipts on such traffic are to be divided between the two companies respectively in accordance with their respective mileage proportions, and under the rules of the Railway Clearing House, will be carried out by giving to each company their mileage proportion, not exceeding in respect of passenger traffic the local passenger fares."

The Great North of Scotland Railway Company refused to implement Mr Grierson's award, and the Highland Railway Company raised this action against them for implement.

The pursuers averred—"The through fare is in all cases the sum of the local fares, and the said award means, and can only mean, that after dividing the whole receipts for passenger traffic covered by article 1 of said agreement into two moieties, one to be deemed to be receipts in respect of traffic *via* 'the Highland route,' and the other to be receipts in respect of traffic *via* 'the Great North route,' each moiety is to be divided between the pursuers and the defenders in proportion to the local fares charged by them in the case of passenger traffic actually carried *via* the route to which the moiety is attributed."

The defenders "explained that the pursuers insist upon a method of apportionment of the receipts in question inconsistent with the application of the mileage proportion principle formulated in Mr Beale's award, and accepted by Mr Grierson. The agreement of 18th June 1886 related to traffic of all kinds with the single exception of mails, and under the reference to Mr Beale and his award, the whole receipts of the traffic fell to be divided according to mileage. The contention of the pursuers, as shown by their statement, ignores the basis of Mr Beale's award, namely, that division is to be made according to mileage proportion, and substitutes therefor a division proportionate to local fares. Although through fares are the sum of the local fares, local fares are not in all cases proportionate to the mileage distance, and a division in proportion to the local fares as proposed by the pursuers would therefore be inconsistent with the principle of division in proportion to mileage. If it were the meaning of Mr Grierson's award to substitute a division in proportion to local fares for mileage division, it would be *ultra fines compromissi*, and null and void, because Mr Grierson could only explain and carry out Mr Beale's award, and could not introduce a new principle in its place, and the basis of Mr Beale's award was division by mileage proportion. The true meaning of Mr Grierson's award is that the receipts are to be divided into two moieties, that one of these moieties is to be divided according to the respective mileage proportions of the two companies, by the Great North route, and the other is to be divided according to the respective mileage proportions of the two companies by the other route, and that the limitation, 'not exceeding the local fare,' is to be read as applicable to the aggregate sum received by each company, the local fare alluded to being the local fare of the particular company for traffic by its route. Any other interpretation must ignore the division by mileage proportion, and is unwarrantable."

The pursuers pleaded—"(1) Under and in terms of the said agreement, the defenders are bound to implement Mr Grierson's award, and to concur with the pursuers in taking all steps necessary to have the award carried into effect. (2) The defenders are bound to implement said award by concurring with the pursuers in requesting the Clearing House to divide the receipts in terms of the declaratory conclusions of the summons."

The defenders pleaded—"(1) The pursuers' statements are not relevant or sufficient to support the conclusions of the summons. (2) The defenders having implemented, and being prepared to concur with the pursuers in giving effect to the award of Mr Grierson according to its true and proper construction, are entitled to absolvitor. (3) *Separatim*—In the event of Mr Grierson's award being held to bear the construction contended for by the pursuers, the said award being *ultra fines compromissi*, is null and void, and the defenders ought not to be ordained to concur with the pursuers in addressing a letter to the Railway Clearing House Committee as concluded for."

Upon 7th February the Lord Ordinary

sustained the first plea-in-law for the defenders and dismissed the action with expenses against the pursuers.

"*Opinion.*—In June 1886, the parties to this action entered into an agreement regarding *inter alia* the division between them of the receipts arising from passenger traffic passing between Aberdeen and Inverness, and they agreed that such division should be in accordance with the decision of Mr James Beale. Mr Beale decided 'that the receipts of such traffic are to be divided between the two companies respectively in accordance with their respective mileage, and under the rules of the clearing-house.' The parties very soon thereafter differed as to the meaning and effect of Mr Beale's decision; but instead of going back to Mr Beale to have his explanation of his own award, they submitted Mr Beale's award to a Mr Grierson, in order that he might determine how the receipts from the passenger traffic in question should be divided. Mr Grierson decided that 'the award of James S. Beale, Esq., which determined that the receipts on such traffic are to be divided between the two companies respectively, in accordance with their respective mileage proportions, and under the rules of the clearing-house, will be carried out by giving to each company their mileage proportion not exceeding in respect of passenger traffic the local passenger fares.' The parties having now differed as to the carrying out of Mr Grierson's view, the pursuers have raised this action to have the defenders ordained to implement Mr Grierson's award, by concurring with them in instructing the clearing-house to divide the receipts in question according to their respective local fares.

"It will be observed that Mr Grierson gives no independent judgment on the question between the parties. His award only expresses his view as to the manner in which Mr Beale's award can be carried out. But in expressing this view he has added a condition which is not warranted by Mr Beale's award, and which seems to me to create the whole difficulty.

"By Mr Beale's award the receipts in question were to be divided between the parties, 'in accordance with their respective mileage, and under the rules of the clearing-house.' If the first clause of this award had stood alone, there could have been no doubt as to the principle of division. It would have been according to mileage. But the addition of the second clause gave rise to the contention on the part of the pursuers that the mileage rate was only to be given subject to the 'rules of the clearing-house,' which they say limits the proportion to be received by the defenders to their 'full local fare.' Accordingly the pursuers contend that, if the defenders get their local fare, they can claim no more, although, if reckoned by mileage, they would be entitled to more. I think it is quite open to the defenders to answer to this, that the governing principle laid down by Mr Beale is 'mileage' proportion, and that the reference to the rules of the clearing-house is only subordinate; and that, in any view, the rules of the clearing-house, when they prescribe that a through fare is to be divided so that each company shall receive 'its full local fare,' do not say (whatever they may imply) that in no case and under no circumstances is any company to receive more than its local fare. But Mr Grierson's award meets this answer, for it provides that the through fare shall be divided by giving each company its mileage proportion '*not exceeding* ' . . . the local passenger fares.'

"Mr Beale's award is not submitted in this action to the construction of the Court, but I may say (as I heard an argument upon it) that if it had, I should have held that it fixed mileage proportion as the principle of division, the reference to the clearing-house rules being merely for the purpose of settling where, when, and how that particular kind of division was to be effected, and its amount calculated and determined.

"It is Mr Grierson's award that the pursuers seek to have the defenders ordained to implement; but they conclude that the defenders shall be ordained to implement it by concurring with the pursuers in instructing the clearing-house to divide the receipts in question by giving to each such part thereof 'as shall be proportionate to the local fares charged by them 'respectively.' To such a decree I think the pursuers are not entitled on the facts averred by them. The pursuers ignore the fact that mileage proportion is as much an element in Mr Grierson's award as local fares. Indeed, according to Mr Grierson's award, mileage is the principle of division subject to the condition that the mileage proportion 'shall not exceed' the local fare. To give the pursuers decree as concluded for, would be giving them more than Mr Grierson has awarded; for it is not disputed that the division by mileage is more favourable for the defenders than the local fares if the latter are ascertained in a particular way.

"I suggested, early in the course of the case, that the parties should go back with their difference to Mr Beale. The pursuers, however, declined to act upon the suggestion, although I understood the defenders were willing to adopt it."

The pursuers reclaimed, and argued:—*On the competency*—The agreement provided that any dispute that arose as to its meaning should be referred to Mr Grierson. Mr Beale, as agreed, had decided this question as to the division of the passenger traffic receipts, and his award had become part of the agreement. When the joint-committee were divided in opinion as to its meaning, the whole matter was competently brought before Grierson as provided. Mr Grierson was now dead, so that no explanation could be got as to the meaning of his award, and the pursuers' only resource was to bring this action, but they were willing to refer the whole matter to Mr Wainright, as provided for in the agreement. The defenders had gone into the arbitration before Grierson, and although they protested at the beginning, they had taken part in the proceedings, and could not now say that they

were incompetent, as it was really a question of the construction of the agreement. *On the merits*—The question was whether the moieties into which the sum arising from the through passenger traffic receipts were to be divided, were to be apportioned by mileage or by local passenger fares. Mr Grierson's award meant that each company was to get a sum not exceeding its own local fares, *i.e.*, the sum was to be divided in proportion to the local fares, disregarding the mileage. That was the only fair mode. The through fare from Aberdeen to Inverness was 9s.½d. If that was divided according to the proportion of local fares, the Highland Company got 4s. 7d., the Great North Company got 4s. 5½d., whereas if it was divided by mileage, the Highland Company got only 2s. 10½d., while the Great North got 6s. 2d.

The respondents argued—The reference to Grierson was incompetent. The Great North Company had protested against it, and had only gone on under protest. The question of how the moieties were to be divided had been settled by Beale in his award. He was the person appointed by the agreement to decide the question; he had done so, and there was no power to have his award reviewed by Grierson. Beale had decided that the division was to be upon the mileage principle. The Great North Company were willing to go back to Beale for explanation of his decision, but the Highland Company objected. Even under Grierson's award, read along with Beale's, the pursuers must fail, because although he specified the local fares, the principle still remained that the division was to be by mileage. The only local fare that could be charged was that on the defenders' line from Aberdeen to Elgin, and that was the only consistent way of dealing with the question, and the defenders did not seek to get more than their proportion of that local fare.

At advising—

LORD JUSTICE-CLERK—This is a very extraordinary case, and it comes before us in a somewhat extraordinary form. The real facts are simple enough. When the Great North of Scotland and the Highland Railway Companies were entering into an agreement about traffic, they selected an arbiter whom they considered the best man to decide how certain sums were to be divided between the two companies. Each of the two lines had a route between Inverness and Aberdeen. One line ran as far as Keith from Inverness, and the other line ran from Aberdeen as far as Elgin. The two lines between Elgin and Keith were loops, and the agreement between the parties was that the gross receipts of both railways from passenger traffic between Aberdeen and Inverness were to be divided into two moieties, and these moieties were to be divided between the two companies in accordance with the decision of Mr James Beale, arbiter appointed by agreement between the two companies. Now, in my opinion that was a reference, an absolute reference to Mr Beale of the questions between them. Well, Mr Beale considered the matter, and issued an award by which he declared that the receipts of such traffic were to be divided between the two companies respectively in accordance with the respective mileage, and with the rules of the clearing-house. Now, was that an intelligible decision, or was there something about it that required to be cleared up? If it was not an intelligible decision, then nothing could be done upon it. If it was an intelligible decision, then the clearing-house should have proceeeded to act upon it, and we do not know yet, so far as I know, whether the clearing-house would have found the slightest difficulty in carrying out the award of Mr Beale. But the Highland Company having raised the question as to what should be done in the award, and the Highland Company and the Great North of Scotland Company having differed, the question was sent to Mr Grierson.

Now, Mr Grierson was the gentleman who was the arbiter appointed by the parties to settle the general questions between them. But it does not appear to me that Mr Grierson was in any way appointed by the parties to settle the questions between them arising out of the award by Mr Beale. Mr Beale was the arbiter chosen for that particular matter, and, unless it was otherwise expressed, I hold that he was chosen as arbiter upon that matter to the exclusion of all other arbiters. And therefore in my judgment it was not competent to go to Mr Grierson upon that matter. If both parties had consented to refer that matter by submission to Mr Grierson, of course they would be perfectly entitled to do so. I do not think there was any such formal submission. We are told—although I think it is a very great pity that the matter was not made much clearer by the defenders—that when they went before the arbiter they protested; they laid before him their objection to his right to decide any such question, and that they went on, he having practically set aside their objection upon the footing that they were protesting parties. I think it is a pity that the procedure took that form at all. But at the same time I cannot say that the defenders are barred from stating their objection to Mr Grierson acting in this matter at all. I am inclined to hold that they sufficiently raise that question by objecting to the relevancy of this action, which is an action raised for the purpose of obtaining a finding that they are bound to implement and carry out the decree-arbitral or award pronounced by Mr Grierson.

Now, that being my view, the opinion I come to is that the Lord Ordinary's interlocutor must be affirmed, and I do not think it necessary to go at any length into any view as regards any attempt to interpret Mr Grierson's award. I shall only say this, that if I had to interpret Mr Grierson's award I fear I could not find anything which would enable a court of law to give a decision at all upon this question. If the question was a question of interpretation or explanation upon the

award which was pronounced by Mr Beale, I say the reasonable course for the parties was to go to Mr Beale and ask him to make clear any matter about which there could be any reasonable doubt. It would have been perfectly competent for him to do so, and there could be no conceivable objection in form to his doing so. I have not the slightest doubt in my own mind that if the parties had done that, the whole of this matter would have been cleared up at once. I have come to the conclusion, on the whole matter, that our proper course is to adhere to the Lord Ordinary's interlocutor. We must sustain the plea of the defenders against the relevancy of the action, and dismiss it.

LORD YOUNG—The question in dispute between the parties in substance regards the division of the receipts from certain traffic on their railways under an agreement which was entered into between them in 1886. That agreement provides that the receipts in question are to be divided into moieties, and that such moieties shall be divided between the two companies respectively in accordance with the decision of James Beale—one moiety as if it arose from traffic carried *via* Keith, Mulben, and Elgin, and the other moiety as if it arose from traffic carried *via* Keith, Craigellachie, Rothes, and Elgin. Now, appeal was made to Mr Beale to divide the moieties as hereby agreed upon; they were to be divided in accordance with his decision, and he pronounced a decision dividing them. The parties differed as to the meaning of the document which expressed his decision, and in a view which was explained to us this difference as to the meaning of his decision was truly a dispute and difference between the parties as to the true intent and meaning of the contract, because his decision after it was given formed part of the contract. The Highland Company proposed to go to Mr Grierson (the arbiter appointed for general questions) to decide it. The other party protested, but ultimately went on before Mr Grierson. Mr Grierson pronounced an award as to the division which was to be made according to his view of the meaning of Mr Beale's decision. The present action was brought for the purpose of declaring that the division shall be made according to Mr Grierson's award, and the action almost necessarily leads to the construction of that award which the pursuers contend for without the not infrequent alternative in such cases of asking decree in their favour for implement of the award according to the true construction as that shall be determined by the Court.

The Lord Ordinary has found that this action is irrelevant. Now, there are two grounds upon which it may be irrelevant—one going totally to the relevancy of the whole case, the other not, but still affecting the relevancy of the action. That which goes to the whole case is that Mr Grierson had no jurisdiction in the matter, that the division of the two moieties was by the contract between the parties to be according to the decision of another gentleman, Mr Beale, and that the reference generally of questions under the contract between them to Mr Grierson—and all disputes and difficulties arising under the contract between them—did not at all supersede the reference to Mr Beale of this particular matter, or Mr Beale's decision, which then became—as fairly stated—the contract between the parties—a contract by decision, not disputable, *res judicata* between the two parties. In that view Mr Grierson has no authority in the matter, and if there was any dispute as to the meaning of Mr Beale in the decision which was to govern the parties, and according to which the moieties were to be decided between them, there were only two ways of deciding it. One was to ask Mr Beale himself, to speak more clearly. If that was not competent the only other way was to go to a court of law to have its meaning determined. But I think there was no contract between the parties to refer any disputes or differences as to Mr Beale's language, meaning, or intention in this matter—as to which he was arbiter—to Mr Grierson, and according to that view there is a total want of relevancy in the case, for there is no occasion to determine the meaning of Mr Grierson's award, because there is no right on the part of the pursuer to have the rights of parties governed by it.

Another view going to the relevancy, but not so totally, is that Mr Grierson's award will govern the rights of parties, but that his award, if interpreted by the Court, will not bear the construction which the pursuers put upon it. I am not quite sure which is the Lord Ordinary's view. I think his mind is affected by both views. I think he was of opinion that Mr Beale was the arbiter of the matter, that the case was not one for going to Mr Grierson, and that if there was dubiety as to Mr Beale's meaning or the meaning of the language which he had used to express his decision—he was the proper party to interpret it. Well, that is excluding Mr Grierson's jurisdiction altogether, and that completely justifies the interlocutor finding the action irrelevant. I confess that with your Lordship I am disposed to take that view, and to agree with the Lord Ordinary in it if it be his view, and I think he had that opinion, although he also thought, and I agree with him in thinking, so far as I am able to judge, that Mr Grierson's language will not support the pursuers' views as to their rights. But then, although I have that impression, I should hesitate to decide it, because it is so technical a matter. I think it was properly left by the parties to men better able to judge of it than Judges of this Court, and if this Court had been called upon to judge that matter I should not be prepared to say that I should act upon any views or expressions that I have upon it, and should have desired assistance as to how the rights of parties were to be governed. But I think it enough to put the decision, so far as my voice in it goes, upon this, that I think the matter is referred specifically to Mr Beale, and that his judgment must govern. If there is

dubiety about it I think he may be appealed to still to make it clear. I concur that the Lord Ordinary's interlocutor should be affirmed, and with expenses.

LORD RUTHERFURD CLARK—This action was raised for the purpose of having it declared that the pursuers, in virtue of Mr Grierson's award, were entitled to have the joint-money divided between them in the ratio of the local rates. In my opinion they are not so entitled, and I do not think Mr Grierson's award gives them right to that. I concur in the Lord Ordinary's opinion of the construction of the decree-arbitral, and I also concur in the result at which he has come.

LORD LEE—I prefer to put my opinion entirely upon the ground which has been stated by your Lordship and by the Lord Ordinary. I am not competent to interpret this decision of Mr Grierson from anything I have heard in the argument addressed to us. It is a very technical matter, and my opinion can be stated in a very few words. The theory of the pursuers' summons is, that they are entitled to call upon the Court to enforce Mr Grierson's award as regulating this division of the traffic. Whether Grierson's award shall be the same as Beale's or entirely different, Grierson's award is to rule. According to the argument the view would seem to be that Grierson had found out a mistake in Beale's decision. It was frankly expressed, in short, that Mr Grierson's award involves a review of Mr Beale's. Now, that is entirely inconsistent, as your Lordship has pointed out, with the terms of the agreement between the parties. The contract is, that this matter, as a special matter involving technical skill and experience, is to be regulated by the decision of Mr Beale, and of nobody else. When I am asked, therefore, to examine the decision of Mr Grierson, and to pronounce a decree that Mr Grierson's award is to be enforced against the other party, I am bound to look in the record for some reason why Grierson should rule. I find none. I say the pursuers' allegations are entirely irrelevant to support the conclusions of the summons, because his allegation shows that the matter to which he refers in his summons was entirely left to the decision of Beale. I agree with the remark made by Lord Rutherfurd Clark in the course of the discussion that this matter is not so distinctly raised in the pleadings as it might have been. I think the defenders made a mistake in pleading *ultra fines compromissi*, which implies that there was some agreement to refer the matter to Mr Grierson. That is not an objection at all, and this third plea is rather misleading, and altogether inconsistent with the plea we are going to sustain, which is, that there never was nor could be any decision by Mr Grierson without a totally new agreement, and no new agreement referring the matter to Mr Grierson has been alleged to exist.

The Court adhered.

Counsel for the reclaimers—Low—C. S. Dickson. Agents—J. K. & W. P. Lindsay, W.S.

Counsel for the Respondents—D.-F. Balfour, Q.C.—Ferguson. Agents—T. J. Gordon & Falconer, W.S.

Wednesday, July 9.

SECOND DIVISION.

[Lord Trayner, Ordinary.

PICKARD & CURRY *v.* PRESCOTT.

Patent—Prior Publication—Proof.

In an action for infringement of letters-patent dated July 24, 1885, it was proved that a foreign review dated June 30, 1885, contained a description of an article which was admittedly identical with the patent. The agents in Great Britain for the sale of the review deponed that in 1885 they supplied it to two medical institutions and to three customers in monthly parts. Their periodical book showed that one of these customers had been supplied with the June number on 10th July. He could not say when the number had been delivered to him or when he had read it. *Held* that the evidence was sufficient to establish publication of the article in the United Kingdom prior to 24th July 1885.

In January 1889 Messrs Pickard & Curry, ophthalmic opticians, 195 Great Portland Street, London, raised this action of suspension and interdict against George Prescott, ophthalmic optician, 33 Lothian Road, Edinburgh, to have him restrained from the infringement of letters-patent granted to the complainers on 24th July 1885 for "improvements in the bridges of pince-nez or double eye-glasses."

The respondent stated that similar inventions were disclosed by certain letters-patent and trade catalogues, and on 29th October 1889 he amended his record so as to include among the alleged prior publications "Notice or article entitled 'Pince-nez pour les Astigmates,' by Dr Mottais of Angers, which appeared in the monthly number of the *Revue Generale d'Ophtalmologie* for June 1885, vol. iv., pp. 253-4, and which notice or article was published and sold generally in the United Kingdom in June and July 1885, and in particular was sold by Messrs Williams & Norgate, Edinburgh and London, agents for the sale, on 10th July 1885, and was deposited about the same date in the libraries of the Ophthalmic Hospital and the Medico-Chirurgical Society, both in London."

He pleaded, *inter alia*—"(2) The alleged letters-patent founded on by the complainers are null and void or invalid, in respect—1st. The said William Curry and Joseph Fidoe Pickard were not the first and true inventors of the alleged invention described in the letters-patent and specifica-