

John Turner Scott, burgh officer of Dumfries, and residing there, and John Malcolm, superintendent of police, Dumfries, and residing there, were defenders, the issue was as follows:—

“Whether, on or about the 21st day of November 1866, the defenders wrongfully and illegally searched the Hound and Hare Inn, in Dumfries, occupied and tenanted by the pursuer, or part thereof—to the loss, injury, and damage of the pursuer?”

Damages laid at £500.

FRASER and RHIND for pursuer.

YOUNG and GIFFORD for defenders.

The jury returned a verdict for the defenders.

Agent for Pursuer—James Barton, S.S.C.

Agent for Defenders—Wm. Kennedy, W.S.

### Friday–Saturday, July 24, 25.

(Before Lord Ormidale.)

#### SMART v. GLASGOW AND SOUTH-WESTERN RAILWAY.

*Jury Trial—Reparation—Personal Injury.*

In this case, Archibald Smart, gardener, Fullarton House, Troon, was pursuer; and the Glasgow and South-Western Railway Company were defenders. The issue sent to the jury was in the following terms:—

“Whether, on or about the 22d of May 1867, at or near Dalry Junction, on the defenders’ line of railway, one of the passenger trains on the said line came into collision with an excursion train, in which the pursuer was travelling, and then standing at or near the said junction, in consequence of which the pursuer was injured in his head and chest, and other parts of his body, through the fault of the defenders—to his loss, injury, and damage?”

Damages were laid at £2000.

MONCREIFF, D.-F., and BRAND for pursuer.

YOUNG, SHAND, and JOHNSON, for defenders.

The jury returned a verdict for pursuer, assessing the damages at £500.

Agent for Pursuer—A. K. Mackie, S.S.C.

Agents for Defenders—Gibson-Craig, Dalziel, & Brodies, W.S.

### Friday–Tuesday, July 24–28.

(Before the Lord President.)

#### KERR v. J. CLARK AND CO.

*Jury Trial—Patent—New Invention.*

The pursuer in this case was Peter Kerr, of the firm of Clark & Co., thread manufacturers, Seedhills, Paisley, and the defenders were J. Clark & Co., thread manufacturers, Gordon’s Loan, Paisley, and John Clark, thread manufacturer there, the sole partner of the said firm of J. Clark & Co. The pursuer set forth that on the 2d October 1857 he obtained letters-patent under the Great Seal, and sealed the 5th January 1858, for the invention of “Improvements in Preparing and Finishing Threads or Yarns.” By the said letters-patent there was granted to the pursuer, for fourteen years from the date of the same, the exclusive privilege of making, using, and vending the said invention within the United Kingdom. At the date of the patent the invention was new, and the

pursuer was the first and true inventor thereof. The patent was still in force, and the pursuer continued to hold the rights which were thereby created and secured. The pursuer further set forth that, in contravention of the said letters-patent, the defenders, at their works in Paisley, during the period between 20th April 1867 and the date of raising the present action, had been wrongfully using the pursuer’s invention, or a material part thereof, for the purpose of preparing, polishing, and finishing threads and yarns, and the pursuer had suffered loss and damage through the defenders’ contravention of the patent. The defenders denied that the patent was valid. They alleged that the inventions described in the said letters-patent, so far as they differed from machines or mechanism in common use long before the date, and at the date, of the said letters-patent showed no ingenuity or invention, and were of no practical use. The alleged inventions described in the said letters-patent, specifications, and drawings, consisted of mere colourable and useless modifications or alterations upon mechanism perfectly well known and in public use at and prior to the date of the said letters-patent.

The following were the issues sent to the jury:—

“It being admitted that the pursuer obtained the letters-patent No. 9 of process, dated 2d October 1857, and sealed 5th January 1858, and duly filed, the specification of which No. 14 of process is a certified copy, and relative drawings of which No. 15 of process is a certified copy; and it being further admitted that, on 16th July 1864, the pursuer duly executed, and thereafter, on 18th August 1864, duly filed a disclaimer and memorandum of alteration upon the said specification, of which No. 16 of process is a certified copy:—

“Whether, from the 20th April 1867 to the 14th November 1867, or during part of said period, and during the currency of the said letters-patent, the defenders did, at their works at Paisley, wrongfully and in contravention of the said letters-patent use the invention described in the said letters-patent, specification, and relative drawings, as altered by the said disclaimer and memorandum of alteration, or a material part of the said invention, to the loss, injury, and damage of the pursuer?”

Or,

- “1. Whether the pursuer is not the first and true inventor of the invention described in the said letters-patent and relative specification and drawings and disclaimer?”
- “2. Whether the invention described in the said letters-patent and relative specification and drawings and disclaimer was publicly used in the United Kingdom prior to the date of the said letters-patent?”

Damages laid at £500.

CLARK and BALFOUR for pursuer.

YOUNG and GIFFORD for defenders.

The jury, after an absence of an hour and a-half, returned the following verdict:—

“At Edinburgh, the 24th, 25th, 27th, and 28th days of July 1868. Before the Right Honourable the Lord President—Compared the said pursuer and the said defenders by their respective counsel and agents; and a jury having been balloted and sworn to try the issue No. 19 of process, and the counter issues No. 17 of process, between the said parties, say upon their oath that, in respect of the matters proven before them, they find for the

pursuer on the counter issues, and on the pursuer's issue they find for the pursuer, and assess the damages at fifty pounds; but with leave reserved to the defenders to move the Court to enter up the verdict for the defenders in the event of the Court being of opinion that the patent is invalid on the ground of any legal objection or objections that may be competently urged by the defenders; and, with reference to such legal objections, the jury find specially that the novelty of the pursuer's invention consists in the construction of the polisher described in the specification and its application to the polishing of thread. Find that polishing threads or yarns by frictional contact with rollers or cylinders revolving on their own axis, in which grooves or annular indentations are made for the purpose of smoothing or polishing the said threads or yarns, was new at the date of the pursuer's patent. Find that the system or mode of polishing or finishing threads or yarns by means of a pair of frictional polishers was not new at the date of the pursuer's patent. Find that the system or mode of polishing or finishing threads or yarns by means of a single frictional polisher, roller, or cylinder, was not new at the date of the pursuer's patent. Find that the system or mode of constructing frictional polishers, in which a current of air is made to pass through the shafts thereof, and to impinge on the threads or yarns by means of fanner-blades or vanes, was new at the date of the pursuer's patent. Find that the term "preparing thread," used in the title of the patent, means, in the language of the thread manufacturing trade, the starching or sizing of the thread previous to its being polished, and means nothing else."

Agents for Pursuer—Gibson-Craig, Dalziel, & Brodies, W.S.

Agents for Defenders—Campbell & Smith, S.S.C.

Monday, July 20.

## SECOND DIVISION.

### PRINGLE v. PRINGLE'S TRUSTEES.

*Trust—Antenuptial Contract—Power to Revoke.* A lady, in right through her father's settlement to certain heritable properties and heritable bonds, entered with her husband into an antenuptial contract of marriage, by which she conveyed her property to trustees in order that the income might be applied for the benefit of the spouses during their lifetime, the fee to be disposed of after the lady's death according to her father's settlement. Both parties bound themselves to do nothing at variance with this provision, and the deed was declared irrevocable. There is no issue of the marriage, and no probability that there can be any. *Held*, in conformity with the judgment of the Court in *Anderson v. Buchanan*, that the trust subsisted and was not revocable, and that the power of the contracting parties to revoke was not affected by any want of interest in third parties.

This was an action of declarator brought by Mrs Mary Anderson or Pringle, of Wilton Lodge, in the county of Roxburgh, and Mr David Pringle, of Wilton Lodge, her husband, for the purpose substantially of putting an end to the trust constituted by their antenuptial marriage-contract, and declaring the right of Mrs Pringle to dispose of the sub-

ject of the trust at pleasure, either onerously or gratuitously.

It appeared that Mrs Pringle was infest under the settlement of her father in certain heritable properties, and was also vested in two heritable bonds of the value of £10,000; and by her marriage-contract, dated in 1858, entered into between her and the other pursuer, she conveyed her whole property to trustees for the purpose, *inter alia*, of the income being applied for the benefit of the spouses during the marriage, and the fee being disposed of after Mrs Pringle's death in the manner provided by the settlement of her father. By the marriage-contract it was declared, that "both parties hereby bind and oblige themselves to implement their respective parts of the premises, and not to do any act or grant any deed at variance with these presents, which are hereby declared not to be revocable or subject to alteration by the parties hereto, or either of them, on any ground, or on any pretext, or in any capacity whatever." It was with reference to this provision that the present question arose.

The pursuer maintained the following pleas:—  
 "(1) According to the legal construction of the contract of marriage before set forth, no person, except the pursuer David Pringle and the heirs of the body of the pursuer Mary Anderson or Pringle, has a vested and indefeasible right or interest under any of the provisions contained in the said contract, so far as regards the lands and others, and bonds and dispositions in security mentioned in the conclusions of the summons, or under the disposition and assignation above mentioned. (2) There being no heirs, and no possibility of there now being heirs of the body of the pursuer the said Mary Anderson or Pringle, and the said David Pringle being ready and willing to renounce all his rights under the said contract and disposition and assignation, in so far as the same affect or might hereafter affect the said lands and others and bonds and dispositions in security, the pursuer Mary Anderson or Pringle has full right and power to sell and onerously dispose of the said lands and others, and also to discharge or assign, either onerously or gratuitously, the said bonds and dispositions in security. (3) The defenders, the trustees under the said contract, being vested by virtue of the said registered disposition and assignation in the said lands and others and bonds and dispositions in security, for the sole purpose of protecting interests which do not exist and cannot come into existence, they are bound to redispone and convey and assign the same to and in favour of the pursuer Mary Anderson or Pringle, as concluded for; or otherwise to concur in and consent to all dispositions, conveyances, discharges or assignations to be executed by her of the said lands and others. (4) The pursuers having, since the date of the marriage-contract and the said disposition and assignation, acted and transacted with the property upon the footing that they had the powers now claimed in this action, and this having been done with the knowledge and concurrence of the defenders, the defenders are not now entitled to maintain the defence which they have stated to this action."

The defenders pleaded:—"(2) According to the sound construction of the marriage-contract no absolute right to the lands and bonds labelled is vested in the pursuers, or either of them, and neither of the pursuers has any power, *stante matrimonio*, to sell, burden, or dispoise, onerously or gratuitously, of the said lands, or to uplift, discharge, assign, or otherwise dispose of, either onerously or gratuitously,