statutes, to consider the question viewed in the abstract. It is idle, I think, to speculate at this time of day upon the question as to innocent indorsees being entitled to depend upon such assurances, and on the implied authority of masters to bind their owners in such a matter. The question has received full consideration, and must be held to have been fixed.

The case of *Grant and Norway* affirms the principle that a bill of lading for goods not put on board, does not bind the owner; that of *Hubbersty* that a master cannot charge his owner by signing two bills of lading; and, finally, the Act of the 18 & 19 Vict., by the plainest possible implication, leads to the conclusion of a liability limited to the party himself who signs the bill.

The provision of the statute to which the pursuer appeals is 18 and 19 Vict., cap. 111.

The provision as to the exception in favour of the shipmaster is noteworthy in reference to the argument urged so strongly in favour of the expediency of supporting the rights of onerous indorsees. The shipmaster is not bound if he can show absence of default by the shipper.

The question as to blank in bill of lading seems to me to be unnecessary, and probably not proper to be entertained at this stage of the proceedings.

I therefore hold that the action, as laid, is irrelevant, and falls to be dismissed.

The other judges concurred.

The action accordingly was dismissed as irrelevant.

Agents for Pursuers—White-Millar & Robson, S.S.C.

Agents for Defender—Murdoch, Boyd, & Co., W.S.

Tuesday, June 25.

FIRST DIVISION.

M'DOUGALL AND MANDATORY *v.* GIRDWOOD.

(*Ante*, vol. iii, p. 367.)

Jury Trial—New Trial—Bill of Exceptions—Infringement of Patent. Motion for new trial, on the ground that the verdict was against evidence, refused. Exceptions disallowed.

In this case, Alexander M'Dougall, manufacturing chemist, Manchester, was pursuer, and Robert Girdwood, wool-broker, Tanfield, Edinburgh, was defender. The pursuer set forth that, by letters-patent, he had obtained for fourteen years the exclusive privilege of making and vending his invention within the United Kingdom. In his specification he claimed, as secured to him by the letters-patent,—1st, The use of carbolic acid in the preparation of materials or compositions for destroying vermin on sheep and other animals, and for protecting them therefrom; 2d, The use of alkalies and tallow, or other saponifiable substance, in combination with the above products, when used for the purposes set forth. In his subsequent disclaimer and memorandum of alteration, the pursuer declared—"My invention consists in the use of the heavy oil of tar, or dead oil, or crude carbolic acid, as it is sometimes called, or creosote obtained in the destructive distillation of carbonaceous substances. These materials I treat with an alkali, and add a saponifiable fatty substance." The issues tried before the Lord President and a jury in April last, were—1. "Whether, between 28th January and 17th May 1866, the defender did, within or near his premises at Tanfield, near Edinburgh, wrongfully, and in contravention of the said letters-patent, use the invention described in the said specification, as altered as aforesaid?" 2. "Whether, between 28th January and 17th May 1866, the defender did, wrongfully, and in contravention of the said letters-patent, vend a material for destroying vermin on sheep and other animals, and for protecting them therefrom, manufactured by the use of the invention in the said specification, as altered as aforesaid?"

The defender denied that the "Improved Melossoon or Sheep Protecting Dip" sold by him was the same, or substantially the same, as the pursuer's invention, and explained that he used in his manufacture light pitch oil, having a less specific gravity and a lower boiling point than water, and also vegetable poisons; heavy oil of tar, or dead oil, or crude carbolic acid, or creosote, being carefully excluded, as being injurious to the wool. A number of scientific witnesses were examined. The jury returned a verdict for the pursuer. The defender now presented a bill of exceptions to the Judge's charge, in so far as he had left it to the jury to say, on the evidence, whether the words in the specification, "the heavy oil of tar," &c., do, in their ordinary meaning, as known in trade, comprehend oils produced from the destructive distillation of coal tar, of a specific gravity less than the specific gravity of water; and, particularly, the oil used by the defenders in the manufacture of the composition complained of, as a contravention of the patent; and had directed them in law, that they must find for the defender if they should be of opinion that the said words did not comprehend such oils. The defender also asked the Judge to direct the jury (1) that, according to the true construction of the letters-patent, specification, and disclaimer, no oil of a less specific gravity than water is comprehended within the said patent, specification, and disclaimer; (2) that if the tar oil used by the defender was, prior to the date of the patent, commercially known and used, and was of a lighter specific gravity than water, the pursuer was not entitled to a verdict on either issue. The Judge refused to give these directions.

A hearing took place on the bill of exceptions and also on a rule, obtained by the defender on the pursuer, to show cause why the verdict should not be set aside as against evidence.

Young, Mackenzie, and Balfour for pursuer.

Clark, Watson, and R. V. Campbell for defender.

Lord Curriehill, after reading the issues sent to trial, and the first exception, said that the question was, whether the judge ought to have left it to the jury to say so and so, and it appeared to him that the judge could do nothing else with propriety. The article was described by the words "the heavy oil of tar," &c.; and the defender said that the judge should have told the jury whether or not these words, in their ordinary meaning as known in trade, comprehended oils of a certain specific gravity. How could the judge do that? How was he to know the meaning of the words "heavy oil of tar," &c.? These were not technical words, or words of which the judge was bound to know the meaning. They indicated a certain mercantile commodity,—their meaning was to be ascertained from people who are acquainted with that commodity. But the argument was, that in the specification itself words were to be found which enabled

the judge to construe the words; and that he was bound, having to read that document, to take the information which it afforded in order to give that construction. It was said that, in the clause of the specification which set forth the *modus operandi*, there were words making it incumbent on the judge to say to the jury that the heavy oil of tar must have been of a certain specific gravity. Now, in that part of the specification which described the invention, there were no such words; and with regard to the words occurring in the other part which specified the *modus operandi*, the exception proceeded upon a mistake as to the nature and object of that part of the patent. A patentee, besides describing his invention in words that admitted of no dubiety, was bound to describe a mode in which it could be carried into practical effect, so that any third party of ordinary intelligence in such matters should be able to perform the operation with the prescription before him, and without farther instruction. The object of that clause was to instruct the public, and that was the price the patentee had to pay for their getting a monopoly for a certain time. It was sufficient if the patentee described one mode; and accordingly, in the clause in question, nothing more was done. The patentee described a method of carrying his invention into effect, and, in that description, he said that he was in the habit of taking oil having a greater specific gravity and a higher boiling point than water. That simply came to this—that he was in the habit of taking oil of that particular kind for that particular method. But these words did not occur anywhere in these clauses of the patent which were meant to describe the patent itself; and, accordingly, the judge would not have been entitled to take upon him to construe the meaning of the description of the patent, as occurring in the proper clauses of the specification, by resorting to this allusion to the gravity of the oil in the particular mode of carrying it into execution stated here. The first exception, therefore, was not well founded; and the same must be said of the second. The patent, specification, and disclaimer, read all together, said nothing about the specific gravity of the oil at all. The second branch of the exception —"that if the tar oil used by the defender was, prior to the date of the patent, commercially known and used, and was of a lighter specific gravity than water, the pursuer is not entitled to a verdict on either issue,"—was not a direction in point of law at all, and the judge properly refused to give it. As to the rule, it was undoubtedly a fair jury question whether or not these words, in their ordinary meaning, comprehended the use of oil of a gravity less than the specific gravity of water. The evidence was various. The jury gave a verdict for the pursuer, and it was not a case for a new trial.

The other Judges concurred.

Agents for Pursuer—Macnaughton & Finlay, W.S.

Agent for Defender—Andrew Webster, S.S.C.

Tuesday, June 25.

SCOTT *v.* NAPIER.

Property—Loch—Crown-Charter—Parts and Pertinents—Possession— Common Property. Circumstances in which held on a construction of titles and proof of possession, that the property in a loch was vested exclusively in one proprietor, to the exclusion not only of the public, but also of other riparian proprietors.

John Scott, Esq., of Rodono, in the county of Selkirk, brought this action against Lord Napier, heritable proprietor of the lands of Bowerhope and Crosscleuch; and also against the Duke of Buccleuch and Queensberry, heritable proprietor of the lands of Kirkstead and Dryhope; and James Wolfe Murray, Esq., of Cringletie, heritable proprietor of the lands of Henderland, for their interest, concluding to have it found that the "pursuer, in virtue of his titles and possession, has, along with the other proprietors whose lands lie around and border on the same, a joint right or common property in the loch called St Mary's Loch, lying in the counties of Peebles and Selkirk, and the loch called the Loch of the Lowes, lying in the county of Selkirk; and a joint right of using boats, fowling, fishing, floating timber, and exercising all other rights in or over the said lochs;" and that "the defender, the said Francis Lord Napier, has no exclusive right, either of property or of use, in or over the said lochs, or either of them; and farther, the defender, the said Francis Lord Napier, ought and should be decerned and ordained, by decree foresaid, to desist and cease from molesting and interrupting the pursuer in the exercise of any of his rights aforesaid."

The Duke of Buccleuch and Mr Murray did not appear in the action.

The pursuer stated that, in the year 1235, King Alexander the Second granted to the monks of Melrose a charter called the "Charter of Ettrick," including the lands of Rodono. By a subsequent charter, the King erected these lands into a "free forest." In 1436 King James I. confirmed to the Abbot of Melrose and his monks the lands of Ettrick and Rodono, included in the charter of 1235, along with those of Carrick, and erected the whole into a free regality; and in 1442 the same grant was confirmed by James II. In 1569 the abbacy of Melrose, with all lands, &c., belonging thereto, including Ettrick (but not Rodono), was disposed by King James VI. to James Douglas, as abbot or commendator. And in 1609 the lands of Ettrick were erected into a temporal lordship, called the Lordship of Melrose, in favour of John Viscount Haddington. The lands of Rodono, forming that portion of the territory in the original charter of 1235 lying in Yarrow, had been disjoined from the other portion lying in Ettrick; and in 1599 a charter was granted by the King in favour of John, Master of Yester, *inter alia*, of the lands of Rodono, which are thus described "*Totas et integras terras de Rodona, scilicet terras de Longbank, terras de Quhytehoip, terras de Litillhope als Rodono chapell et terras de Mucklehoip, cum silvis lacubus partibus pendiculis lie outsettis, cum omnibus aliis suis pertinentiis jacen infra vicecommitatum nostrum de Selkirk.*" The pursuer alleged that St Mary's Loch and the Loch of the Lowes were within the lands conveyed by this charter, and were the lochs thereby conveyed. The lands of Rodono continued in the possession of the family of Yester, afterwards Earls of Tweeddale, until the end of the following century; and, in 1683, were conveyed to William Hay, son of the then Earl of Tweeddale, by his second marriage with Elizabeth Montgomerie. Upon this disposition William Hay obtained a charter of resignation and erection from the Crown in 1683. This charter described the lands as conveyed "*cum domibus . . . silvis lacubus piscationibus pasturagiis lie outfield infield outsettis partibus pendiculis et pertinen.*