a good deal of novelty. At the same time, I think there is a principle for the solution of it. The general doctrine and rule of law is that each party is entitled to fish to the centre of the stream. Then let us see what is the effect of anything that arises in the *alveus* which is inconvenient to a party whose fishing is on the southern side of the centre of the stream. Now, supposing that this had been a smaller bank than it is, and that it had not approached so near at its western end to the property of the appellant, and that it had been a mere bank arising in his portion of the stream, which made it inconvenient for fishing so near the *medium filum*, because he could not cast his net between the shore and the bank, is that a reason why the other party should be prevented from having his right substantially as it was found? Clearly not. The only thing that could deprive him of the application of the ordinary rule as to what is to constitute the *medium filum* would be what my noble and learned friend who spoke last alluded to, and what was alluded to in the case of *Wedderburn* v. *Paterson*—namely, that there had been something attached to the soil—some extension of the proper shore on the southern side—that would have made it the point from which you were to measure the centre of the river. Therefore I think that here, so long as the bank is in the position in which it is admitted by the parties to be, we cannot alter the *termini* from which we are to measure where the *medium filum* is. I am glad to observe at the same time that while matters stand in this position it does not appear that the fishings of the appellant have been damaged by it. On the contrary, so far as the evidence goes, it rather appears that the effect of it has been rather to deepen the water on his—the southern side—of the stream, and to give him a greater amount of fishing than he had before. However, that is his good fortune. I think the judgment of the Court below ought to be affirmed.

Interlocutors affirmed, and appeal dismissed, with costs.

Agents for Appellant—H. G. & S. Dickson, W.S., and Loch & Maclaurin, Westminster.

Agents for Respondents—T. & R. B. Ranken, W.S., and Hibbard & Beck, London.

Thursday, June 30.

GLASGOW UNION RAILWAY CO. *v.* HUNTER.

(*Ante*, vol. vi, p. 260.)

Damages — Verdict — Railway — Bridge — Noise — Nuisance—Smoke. Held, (1) reversing decision of First Division, the verdict of a jury summoned under the Lands Clauses Act should be set aside so far as it gave compensation to a proprietor, part of whose ground had been taken by a railway company, for damage to the other part caused by noise of trains, smoke, and general nuisance, and deterioration; (2) with First Division, but that damages might be due for obstruction to light and air caused by the erection of a bridge.

Opinions by Lord Chancellor and Lord Chelmsford that, as the jury had evidently gone wrong in allowing 10 per cent. on a feu-duty which did not belong to the respondent, their verdict on this point should be set aside.

Opinions by Lords Westbury and Colonsay that it must be allowed to stand.

The respondent was owner of a property in Glasgow, part of which fronted Eglinton Street. Part of his property to the back was taken by the appellants under statutory powers. The question of compensation was sent to a jury, in terms of the "Lands Clauses Consolidation (Scotland) Act 1845." The respondent claimed compensation (1) for the value of the property to the back, taken by the appellants; and (2) for the damage done to his remaining property through the construction of a bridge spanning Eglinton Street and adjoining his property fronting that street.

The jury returned this verdict—

"The jury unanimously find the pursuer (respondent) entitled to the following sums, viz.:—

For the property to be taken, .	£1205	4	0
For old materials thereon, .	65	0	0
	£1270	4	0
For the compulsory purchase thereof at 10 per cent., .	127	0	0
Less value of the feu-duty at 20	£1397	4	0
years' purchase, . . .	639	0	0
	£758	4	0
For damage to the pursuer's (respondent's) remaining property caused by noise of trains, railway bridge across the street, smoke, and general nuisance, and deterioration of the tenement next the railway, ...	392	0	0
	£1150	4	0

In all, One thousand one hundred and fifty pounds four shillings sterling; but the jury find no damage done to the pursuer's (respondent's) gable next the railway."

The appellants sought in this action to reduce the verdict, alleging "The said verdict was *ultra vires* of the jury, inept, and null, in so far as (1) the jury awarded to the respondent, in addition to the price of the subjects taken as for the compulsory purchase thereof, a sum of 10 per cent. upon the value of the feu-duty with which the subjects were burdened. The value of said property was £639. This feu-duty did not belong to the respondent, but to the superior of the said property, and was a burden upon the respondent's interest therein. The said verdict was further *ultra vires* of the jury, in so far as (2) the jury awarded to the respondent compensation in name of damage to the respondent's remaining property caused by noise of trains, railway bridge across the street, smoke, and general nuisance, and deterioration of the tenement next the railway. The jury had no power under the Act of Parliament under which the inquiry took place to give damages on any such ground."

The Lord Ordinary (MURE) held that the jury were wrong in giving 10 per cent. upon the value of the feu-duty with which the subjects were burdened, as it did not belong to the respondent, but that the other items were right. The First Division recalled the Lord Ordinary's interlocutor, and held that the verdict of the jury was right in all the items. The Company then appealed to the House of Lords.

Sir R. PALMER, Q.C., and LLOYD, Q.C., for them, argued—Whatever may have been thought to be the law at the time of these judgments in the Court of Session, it has been subsequently settled

by the House of Lords, in the case of *Brand* v. *The Hammersmith Railway Company*, that the owner of houses cannot recover any compensation from a railway company on the ground of vibration, smoke, and noise; because these are the inevitable consequences of a railway being made, and so must be put up with by all landowners.

Lord Advocate, Mellish, Q.C., and Macdonald replied—It is true the House of Lords has now decided that noise and vibration are no ground for compensation to any owner, no part of whose lands has been taken from him, still it has not been decided that, if part of his land has been taken, he has not a right to recover compensation for damage on that ground to the rest of his property. This makes the difference between the present case and the case of *Brand* v. *The Hammersmith Company*. This is an important case, and it would be contrary to justice that the owner of houses which have been damaged in market value by a railway made so close to the houses as to render them uninhabitable, should have no right to be compensated for his loss. This item of damage has been allowed over and over again in Scotland, and the competency of the claim has never before been disputed, especially where, as in this case, part of the claimant's lands has been taken, and the rest of the property damaged by the existence of the railway.

At advising—

Lord Chancellor said it was an action of reduction brought by the railway to reduce a verdict and a judgment of the Sheriff, assessing damages payable by the Company to Robert Hunter, spirit merchant, Eglinton Street, Glasgow, in respect of the following items:—"For property taken, £1270; for the compulsory purchase of the same at 10 per cent, £127; for damage to the remaining property (only the back part of Mr Hunter's premises having been taken, and the front part, abutting on the street, having been untouched), caused by noise of trains, railway bridge across the street, smoke and general nuisance, and deterioration of tenement next the railway, £392." Two objections have been taken to this verdict, which was in a very definite form. One was, that 10 per cent. had been added by the jury, without first deducting the amount of the feu-duty from the £1270. I am of opinion that, according to their own principles of assessment, the jury have gone wrong, because they evidently meant to assess the sum in such a way as to add the 10 per cent., not to the gross total, but to the value, less the amount allowed for feu-duty, which would thus leave £631 for the 10 per cent. to be calculated on, instead of £1270. On this point, however, your Lordships are equally divided, and the result must therefore be that the judgment of the Court of Session, with which I disagree, shall stand as regards this first point. The second point is one which rests upon, and I think is completely covered, by decisions. The claims of Hunter are for damage occasioned by noise, &c., and the jury has awarded him £392 for that. Now, the cases show that the only injuries to be compensated are those which, in the words of the General Railway Acts, are done "in the execution of the works," and not what is done afterwards when the works are completed; but the Railway Company has been met with this other clause, which says that compensation shall be given for damage occasioned by the severing of lands, *or by the otherwise injuriously affecting such lands.* I cannot but think that this section of the Lands Clauses Act was not intended for a moment to entail the liabilities, and that the one rule which had been laid down was to be adhered to, viz., "That damage was only to be given in regard to injuries done in the execution of the works," and not for prospective damages. These are anticipatory evils, and for the most part come under the case of *Brand* v. *The Hammersmith Railway Company.* As to the item, however, of the bridge, it is impossible to say that there might not be damage from obstruction of light and air, and therefore the judgment of this House will be for the Company on this point; with a declaration that Hunter's rights in the matter of the bridge are reserved entire.

Lord Chelmsford concurred. He said that *Brand's* case clearly governed the present, and it would be a forced construction to put on the Lands Clauses Acts were it held that anticipatory damage was by it to be compensated. On the question of the claim in regard to smoke, that was peculiarly without support, for by a special Act of Parliament the Legislature had provided means for forcing railway companies to abate that nuisance. He also concurred on the question of the assessment of 10 per cent.

Lord Westbury thought that to take the view adopted by the Lord Chancellor and Lord Chelmsford as to the 10 per cent. involved an assumption which was warranted by the clear terms of the verdict. The jury gave a particular sum, and on that they assessed the 10 per cent. It was not for the Court to assume that they might in another view of the case have given a smaller sum. The fact was before them, and it was clear. As to the other branch of the case, that was to be decided in accordance with vicious and erroneous principles, which however had become law, and which would therefore be followed. For his own part, he concurred on the ground of a technicality, viz., that a lump sum had been given for a variety of items, smoke, &c., one of which, viz., the bridge over the road, was clearly the subject of compensation, and he therefore assented to the judgment proposed on this head; it being accompanied with a declaration of Hunter's right to claim in respect of damage to light and air.

Lord Colonsay concurred with Lord Westbury on the question of 10 per cent. assessment, and agreed as to the remainder of the judgment.

Agents for Appellants—Murray, Beith & Murray, W.S.

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

Friday July 8.

LORD ADVOCATE *v.* GOVERNORS OF DONALDSON'S HOSPITAL.

Teinds—Valuation—Extract—Registration. In a process of augmentation a document in the following terms was produced:—"The landis of Wester Barres, perteining to Sir Johne Douglas, are worth and may pay in stock and teynd, personage and viccarage, aucht chalders victuall.—This is the just extract of the valuatione of the forsds landis, as is conteined in the principall register yrof, extracted by me,