thing over again, with more emphasis on the two or more retorts and on the common fire-chamber. And No. 3 deals in like manner with the valve in the open space between the furnace and the retorts. Both might have been well omitted, but they do not appear to me either to enlarge or to restrict the claim. The bearing of the claim for the common fire-chamber on the question of infringement I shall consider immediately.

Lastly, as regards the terms of this specification, it is objected that no method of applying the patent to horizontal retorts is described. It is answered that no such objection was indicated during the proof, and no question was asked on the subject. And it is further said that any workman of ordinary skill could, from the directions in the specification, with ease adapt the invention to horizontal retorts. This allegation I cannot judge of, having no evidence to guide me ; but I am unable to affirm that this is not so, and so unable to sustain this ground of challenge.

Such is my view of this specification and claim. I think it very fairly describes and claims the invention which I have shadowed out, and that it claims nothing more. It is only right to say that in addition to the testimony afforded by the public use of the invention, there is a strong body of evidence to the fact that the patent method not only economises fuel, but improves the quality of the oil. The evidence of Macadam, Spencer, Fraser, and of other witnesses of skill, speak to that effect. Dr Macadam says that when he first heard of the invention he thought if it could do what it professed it would well nigh revolutionise the distillation of oil from shales.

The next question is, Was this a new invention —Had it been anticipated?

The case on this head for the respondents is feeble, and need not detain me long. That there had been many attempts to utilise spent shale as fuel is certain, and, as I have said, it is as certain that they were all failures. None of them accomplished what the complainers' method has accomplished, from which it may be inferred that they were not anticipations. The case on this head was reduced to two alleged instances of prior use—A method some years ago at Fulham, and one patented by the respondent Mr Young himself.

In regard to the last it is probably enough to say that it bears no resemblance to the complainers' method, seeing that in it, if I rightly understand it, the furnace and retort form one continuous column, the spent shale falling down to the furnace, without any separation between the fuel and the shale excepting what is called a gas-lute between them. But even had this last contrivance succeeded, which does not seem to have been the case, its operation was entirely different from the casement of the complainers' system. The idea of the Fulham plan was nearer that of the complainers, but it was a very partial and imperfect experiment, and was abandoned after two years. The casement of the complainers' method, open to the outer air, was never resorted to, and in the end the shale at the Fulham Works was not discharged direct from the retorts, but was conveyed to the furnace by a wheeled carriage.

It only remains that I should say a word on the question of infringement. It is contended for the respondent that the process by which the complainers feel aggrieved is not an infringement of his patent, because he does not use a common fire-chamber, but has a separate furnace for each retort.

This question I have found not without difficulty, but I have in the end come to a clear opinion on it adverse to the respondents. I am of opinion that while all the rest of the method now used by the respondents is a direct and undisguised adoption of that described in the patent, the substitution of a row of furnaces separated by a partition from each other, instead of what the complainer designates a common fire-chamber, is but a colourable device, and will not alter the substantial identity of the respondents' system with that of the patentee.

The term fire-chamber has been the subject of some criticism in the evidence. It is not used in the specification, although it is so in the claim. It is questioned whether it means a common receptacle for the combustion of fuel, or a chamber for the generation of heat common to all the retorts. The fire-chamber of the patentee is not a common receptacle for the spent shale, for it is divided into two separate chambers by a centre partition, so that it is said that the only difference in the respondents' furnace is that there is a partition for each retort. On the other hand, it is not doubtful that in both the heat generated throughout the furnace-range affects all the retorts, although those immediately above the separate furnaces in the respondents' method of course receive most of the heat so produced. It may be, however, that by the respondents' plan some of the advantages of the patented system are discarded, as the shale discharged from each retort will not so certainly find a warm resting-place in the furnace. But I hold the infringement to be substantial nevertheless. What I have now alluded to is not the substance of the invention, but an incident of it, and I cannot hold that its omission or rejection will entitle the respondent to adopt the rest.

Lords Young and Craighill concurred.

The Court recalled the interlocutor of the Lord Ordinary, and granted interdict as craved.

Counsel for Complainers—Lord Advocate (Balfour, Q.C.)—J. P. B. Robertson—Guthrie. Agents—Philip, Laing, & Co., S.S.C.

Counsel for Respondents—D.-F. Kinnear, Q.C. —Mackintosh. Agents—Webster, Will, & Ritchie, S.S.C.

Tuesday, December 6.

FIRST DIVISION.

CAMPBELL *v.* CALEDONIAN RAILWAY COMPANY.

Process—Jury Trial—Glasgow Winter Circuit—9 Geo. IV. c. 29.

A pursuer having in December given notice of jury trial for "the next Circuit Court to be held at Glasgow," the Lords appointed the case to be tried at the ensuing sittings in Edinburgh, because if the notice

was intended to refer to the Christmas Circuit at Glasgow it was incompetent—if to the next Spring Circuit, the delay was unreasonable.

The pursuer Campbell sued the Caledonian Railway Company for damages sustained by him while travelling on their line at Pennilee, near Glasgow. He had given notice of trial for the next Circuit Court to be held in Glasgow, and now moved the Court to order the trial to proceed at the ensuing Winter Circuit, fixed, in terms of 9 Geo. IV. cap. 29, for the 27th December, or otherwise at the next Spring Circuit to be held in Glasgow.

The defenders resisted the motion.

Authorities—*Davidson* v. *Gray*, Jan. 6, 1844, 2 Brown 9; *Sinclair* v. *Hollis*, Nov. 9, 1881, *ante*, p. 71.

At advising—

Lord President—I see no reason why these cases should not be tried before the Lord Ordinary as in the Kirtlebridge cases. I think the notice of the pursuer is ambiguous, and may mean that he gives notice either for the Christmas Circuit or for the Spring Circuit ; if it is for the Christmas Circuit it is incompetent, and if for the Spring Circuit it is very unreasonable, by postponing the case too long, and therefore, in one view or another, I am indisposed to give effect to the pursuer's motion. In these circumstances it is unnecessary to find whether this notice has caused the pursuer to lose the lead and pass it over to the defenders, and therefore I now appoint these cases to be tried here at the Christmas sittings.

Lord Mure—I am of the same opinion. If the notice is for the Spring Circuit it is too long to make the defenders wait, and I think, therefore, that the Court has power to appoint the cases to be tried earlier.

Lord Shand—I read the notice of trial at the Circuit Court as for the Spring Circuit at Glasgow, and in that case I think when notice of trial is given for a distant date the other party may give notice to the Lord Ordinary or to us to have it tried earlier. The course of the later decisions leads me to think that rapidity in these cases is considered to be best, and looking at the length of time which has elapsed since the accident which gives rise to this action took place, I think it more necessary than ever in this case.

Lord Deas was absent.

The Lords appointed the trial to take place at the sittings in Edinburgh.

Counsel for Pursuer—Murray. Agents—Smith & Mason, S.S.C.

Counsel for Defenders—Lord Advocate (Balfour, Q.C.) — R. Johnstone. Agents—Hope, Mann, & Kirk, W.S.

Tuesday, December 6.

FIRST DIVISION.

[Lord M'Laren, Bill Chamber.

WALKER *v.* BRYCE.

Personal Diligence—Imprisonment for Civil Debt—Act 43 *and* 44 *Vict. cap.* 34 (*Debtors* (*Scotland*) *Act* 1880), *sections* 4 *and* 5—"*Sums decerned for Aliment*"—*Termly Payment of Aliment—Separate Debts.*

The Debtors (Scotland) Act 1880, section 4, abolishes imprisonment for civil debt except as regards (1) taxes, and (2) "sums decerned for aliment, provided that in any of the excepted cases no person shall be imprisoned for a longer period than twelve months." *Held* (*rev.* judgment of Lord M'Laren) that the various termly payments of an alimentary debt form separate debts, and may each be the subject of a separate warrant of imprisonment for a term not exceeding twelve months, though in the result the debtor may be imprisoned for a period of years.

The Debtors (Scotland) Act 1880, which came into operation on 1st January 1881, provides by section 4, with the exceptions hereinafter mentioned, that no person shall after the commencement of this Act be apprehended or imprisoned on account of any civil debt. There shall be excepted from the operation of the above enactment (1) Taxes, fines, penalties due to Her Majesty, and rates and assessments lawfully imposed and to be imposed; (2) sums decerned for aliment—Provided that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than twelve months."

On 21st August 1880 William Walker was incarcerated in the prison of Ayr under a decree for aliment of an illegitimate child of which he was the father. The incarcerating creditor was Anne Bryce, the mother of the child. The child was born in May 1880, and at the time of his incarceration Walker had not paid any sum under the decree which decerned him to pay aliment quarterly in advance. There were thus two quarters' aliment as well as a sum of inlying expenses due at the date of his incarceration. On 20th August 1881 a new warrant of imprisonment, following on a charge to pay aliment due on 3d November 1880, and 3d February, 3d May, and 3d August 1881, was served upon him in prison. Thereafter on 24th November 1881 he raised this process of suspension and liberation under the Debtors (Scotland) Act 1880, pleading, *inter alia*—"(2) The imprisonment of the complainer since 21st August 1881 being illegal in respect of the Debtors (Scotland) Act 1880, the complainer is entitled to liberation."

The respondent lodged answers averring that the suspender had means amply sufficient to pay.

She pleaded, *inter alia*—"(1) The complainer's statements are irrelevant and insufficient to support the prayer of the note;" and "(3) The diligence of the respondent being formal and regular, is not liable to suspension."

The Lord Ordinary on 2d December having heard counsel, passed the note and granted liberation, but on the motion of the respondent