

with which a party having a level crossing must not lay his account. It would be inexpedient to take any other view. To hold that the granting of a level crossing was to tie up the hands of the railway company, so as to prevent them from using their own ground most advantageously, would lead to serious consequences. The granting of such a privilege must not prevent a railway company from increasing their traffic, though that might have a direct bearing on the party in right of a level crossing. On the other hand, a railway company, having given such a level crossing, could not be allowed capriciously to do things not necessary for their own advantage, to the injury of the proprietor. In the present case, looking to the situation of this siding, a few hundred feet from an important station, there was no wonder that this locality had been chosen. Plainly this was just where a siding was most required. Ample siding accommodation was of very great importance for public safety at railway stations.

Agent for Pursuers—Wilson, Burn, & Gloag, W.S.

Agents for Defendants—Hill, Reid, & Drummond, W.S.

Wednesday, May 15.

LYELL v. GARDYNE.

(*Ante*, vol. iii, p. 299; and ii, p. 251.)

*Jury Trial—New Trial.* On report of a Lord Ordinary in a case where a new trial had been granted, motion to fix a day for trial during session refused.

A new trial having been granted in this case, to-day the Lord Ordinary (Barcaple) was moved to fix a day for trial during session. His Lordship reported the case, stating that the trial had before occupied three days, and that there was no reason to suppose it would be shorter on the next occasion; that this would be very inconvenient during session, and indeed it would be July before he could try the case. His Lordship suggested that it was for the Court to say whether it would not be better to try the case at the sittings, and also before another Lord Ordinary.

The LORD PRESIDENT thought that if the trial were to be during session, it must take place before Lord Barcaple; but considering that it would be July in any view before the case could be tried, the Court held that it should stand over till the sittings. Lord Barcaple would therefore refuse the motion, leaving the parties to give notice of trial for the sittings.

Friday, May 17.

COLDINGHAM RIGHT OF WAY.

SCOTT v. HOME-DRUMMOND AND HERIOT.

(*Ante*, vol. ii, p. 79.)

*Road—Right of Way—Public Place—Sea-Shore—Harbour—New Trial.* Motion for new trial, on the ground that the verdict was contrary to evidence—refused.

This was a motion by the defenders for a rule on the pursuers to show cause why a new trial should not be granted, on the ground that the verdict was contrary to evidence. The pursuers are William and John Scott, fishermen at Coldingham and Eye-

mouth, in Berwickshire. The defender, Mr Home-Drummond, is proprietor of the estate of Northfield, in Coldingham parish. The other defender is tenant of Northfield farm. The question between the parties was as to certain alleged rights of way through the defender's property. The case was tried before Lord Barcaple and a jury in December last, on the three following issues;—

- "1. Whether, for forty years and upwards prior to 1864, or from time immemorial, there existed a public road or right of way from the town of Coldingham on the south to the sea-shore at Petticur-Wick or Pettico-Wick, and to the harbour or inlet called Pettico-Wick Harbour on the north, passing through the estate of Northfield, or part thereof, in or near the direction indicated by a line coloured red on the plan No. 9 of process, and which line is marked by the letters A, B, C?
- "2. Whether, for forty years and upwards prior to 1864, or from time immemorial, there existed a public right of way for foot-passengers from the village of Coldingham Shore to St Abb's Head, and onwards to the sea-shore at Petticur-Wick or Pettico-Wick, and to the harbour there, in or near the direction indicated by a line coloured blue on the plan No. 9 of process, which line is marked by the letters D, E, F, C?
- "3. Whether, for forty years and upwards prior to 1864, or from time immemorial, there existed a public right of way for foot-passengers from the village of Coldingham Shore to the sea-shore at the point called Burnmouth Harbour, and on to St Abb's Head and to the sea-shore at Petticur-Wick or Pettico-Wick, and to the harbour there, in or near the direction indicated by a line coloured yellow on the plan No. 9 of process, which line is marked by the letters H, E, G, C?

The jury returned a verdict for the pursuers on the first and third issues, and for the defenders on the second.

DUNCAN, for the defenders, now moved for a rule on the pursuers to show cause why a new trial should not be granted, contending—(1) That the evidence did not prove that Pettico-Wick was a public place in the proper sense of a terminus to a right of way, but, on the contrary, disproved that; (2) that the only use of the road proved was a use by fishermen, and not by the public; and (3) that the possession proved was not an uninterrupted use, but only an interrupted use, as was shown by the fact that the fields across which the alleged right of way led were occasionally in crop.

The LORD PRESIDENT—I am of opinion that the defender has not made out his case. There were three issues sent to trial, each raising a question of the exercise of a certain right of way. The jury, by their verdict, have negatived the claim under the second issue, finding on that issue for the defenders; and no attempt is made to dispute the verdict under that. The defenders, however, move for a new trial as regards the first and third issues, on the ground that the verdict was contrary to evidence. The road claimed under the first issue is described as a public road or right of way from the town of Coldingham, on the south [reads from first issue]. And the road claimed under the second issue is a footpath [reads from second issue]. Now when these issues were adjusted, the question was raised whether the place at which both these roads are said to terminate, at Pettico-Wick, is in the proper sense a public place; and, to avoid difficulty,