liable. I aver hypothetically and provisionally against both of you, but I do not withdraw the one statement, nor do I support the other.' That is the nature of the case. That being the case, I do not see that we can refuse the issues against both defenders; but at the same time I would advise the pursuer not to trust to his law that the defenders are bound to find out which is the party; for he is bound to make out a case against one or other of them. Holding that view, however, and that justice recommends it, and that the two actions have been conjoined, I have come to the conclusion, though with difficulty, that the issue should be granted.

The LORD JUSTICE-CLERK—I have come to the same conclusion as that which your Lordships have announced. I think the issues are extremely inconsistent; but on the other hand it appears to have been adopted for the purpose of securing substantial justice without a deviation from anything like authority. I quite concur in the observation which Lord Neaves has made, that the case presented here is one in which the party would have been well founded in asking a postponement of the first case until the other should be decided. I think that would have been perhaps more expedient. But that is a matter on which I have no right to express any opinion on the part of the Court. To go with two issues to a jury against defenders, one of whom must infallibly succeed, seems to be a course of proceeding not very likely to answer much purpose, for the party who insists upon it; but as that contention is maintained, and as the proceedings seem to warrant it, I do not find myself justified in refusing to give these issues. There is no doubt that the first action is perfectly relevantly laid; but a statement is made by the defenders in the course of the proceedings which is introduced in the second action by which, no doubt, the defenders in the first are so far relieved. In that action there is an apparent deduction of the state of the fact which if true would lead necessarily to *absolvitor* of the first defenders. However, it is qualified by two considerations—one of which is that as stated in Condescendence II. of the second action, that the information has been derived from the London and Edinburgh Shipping, and it is in consequence of that that the pursuers made their averment. It may be said that there is not here a positive absolute averment, but merely an averment made with reference to a statement made by the opposite party, upon which these parties have brought an action by which this question may be ascertained. Then also it is said that the vessel was under hire, in terms of a contract as to which the party was no information. Now, that is not altogether so precise an averment as that it is impossible to exclude the point under consideration. I think it would have been a better course if the party had taken means to satisfy themselves accurately and precisely as to the nature of the contract, and which they might easily have done by obtaining a diligence to recover it, and thus ascertaining the proper party against whom they had to proceed. They would then have taken another course; but as the case has gone, I do not see how the issues can be refused. There are one or two observations which occur to me on the form of the issues. I understand, in the form as proposed, the words "in breach of said undertaking" are to be introduced.

MR GIFFORD—Yes.

LORD JUSTICE-CLERK—Now, the first parties that are said to be injured are the pursuers, as insurers of the said jute; that is to say, the statement of the separate title from the title that follows, which is that of assignees of the owners thereof. It appears to me to be impossible to do that after apparently recognising the title independently of the assignation; and therefore I should propose that that part should be varied to this effect—"At Dundee, to the loss, injury, and damage of the owners, and of the pursuers as their assignees." It is very awkward to say, "to the injury of the assignees of the owners," the assignation being dated after the date of the loss; and it is impossible to say that the insurers merely, under their contract of insurance, have a right and interest to pursue in a case in which there is no fault averred. This is not an issue in which fault is to be discovered at all. The insurers, of course, would have no title unless in a case of fraud, and therefore I would propose that it should be altered thus—"In breach of their undertaking, the said defenders failed to deliver the said jute, or part thereof, at Dundee, to the loss, injury, and damage of the owners, and of the pursuers as their assignees."

MR GIFFORD—The other issue will be altered in precisely the same terms as your Lordship proposes.

The issues approved of were two, in identical terms against each company—

"Whether, in or about February 1865, the defenders, the London and Edinburgh Shipping Company, received on board the screw steamship "Temora" the various quantities of jute mentioned in the schedule hereunto annexed, and undertook to carry the same from London to Dundee, and to deliver the same at Dundee to the parties entitled thereto? And whether in breach of said undertaking, the said defenders failed to deliver the said jute, or part thereof, at Dundee, to the loss, injury, and damage of the owners and of the pursuers, as their assignees?"

Amount claimed per schedule, £5191, 15s. 4d., with interest at five per cent. from 22d February 1865.

Agent for Pursuers—James Webster, S.S.C.

Agents for Defenders—Horne, Horne, & Lyell, W.S., and M'Ewen & Carment, W.S.

Friday, July 5.

FIRST DIVISION.

MOES, MOLIERE, AND TROMP *v.* LEITH AND AMSTERDAM STEAM SHIPPING COMPANY AND OTHERS.

(*Ante*, vol. iii., page 368).

Ship—Carrier—Damage of Goods—Liability of Owners—Bill of Lading—Onus probandi—*Jury Trial—Special Verdict.* A special verdict, in an action by owners of goods against shipowners, found that the goods had been shipped in good condition at the port of shipment and were delivered in a damaged condition at the port of delivery, owing to breakage, and that there was no evidence to show how the damage had been caused. The bill of lading contained the clause "Not answerable for breakage." Held, on a construction of the bill of lading, that it lay on the pursuers to prove fault on the part of the shipowners, and

there being no proof of fault, verdict entered up for defenders.

The pursuers in this case were Messrs Moes, Moliere, & Tromp, of Amsterdam, merchants; and the defenders were the Leith and Amsterdam Shipping Company, Leith, the registered owners of the screw steamship "Ivanhoe of Leith," and the partners of the company. The issue sent to the jury was—

"Whether on or about 15th December 1865 the pursuers shipped at Amsterdam, on board the defenders' steam-vessel 'Ivanhoe,' a quantity of sugar in good order and condition, to be conveyed in terms of the bill of lading contained in the schedule annexed hereto; and whether the defenders, in breach of the contract between the parties, failed to deliver the said sugar in like good order and condition at the port of Leith—to the loss, injury, and damage of the pursuers?"

Damages were laid at £190 sterling.

The schedule referred to was as follows:—

"Shipped in good order, and well conditioned, by Messrs Moes, Moliere, and Tromp, in and upon the good steamship called the 'Ivanhoe,' whereof is master for this present voyage D. Bowden, and now lying in this port, and bound for Leith, with leave to sail with or without pilots to tow or assist vessels in all situations, and to call at different other ports without being deemed a deviation:—

Agents—Leith: Donald R. Macgregor. Amsterdam: Gem. mening & Penning. Harlingen: J. & S. Wiarda.

E 1069 loaves refined sugar, in paper,

			weighing	10,000 kils.
1100	do.	do.	do.	10,002 ,,
1630	do.	do.	do.	15,000 ,,
1654	do.	do.	do.	15,000 ,,
453 loaves.				50,002 kils.

being marked and numbered as in the margin, with liberty to tranship the said goods on board any other craft or steamer), and are to be delivered in the like good order at the port of Glasgow (the act of God, enemies, pirates, thieves, restraint of princes, rulers, and people, vermin, jettison, barratry, and collision, fire on board, in bulk or craft, or on shore, and all accidents, loss and damage whatsoever, from the goods, by leakage, contact or otherwise, from machinery, boilers, and steam and steam navigation, from perils of the seas and rivers, or from any act, neglect, or default whatsoever of the pilot, master, or mariners, in navigating the ship, or from materials, or labourers in loading or discharging the goods, being excepted, and the owners in no way liable for any consequences of the causes above excepted), unto Messrs Stewart and Morrison, in Glasgow, or order, on paying freight for the said goods, at the rate of 22s. 6d. per ton delivered, and primage and average accustomed.—In witness whereof, the master, agents, and purser of the said ship have signed three bills of lading, all of this tenor and date, one of which being accomplished, the others to be void.

Sugar in loaves to be weighed at Leith in quantities of not less than 5 cwt. at a time.

The carriage of the goods from Leith to Glasgow station only to be borne by the vessel, and no farther responsibility to rest with the ship after delivery at Leith.

"Weight, contents, measure, quantity, and value unknown; and not answerable for damage, leakage, lighterage, breakage, corruption, rust, torn wrappers, decay, or mortality, and the wrong delivery of goods, caused by error or by insufficiency of marks or numbers. The goods to be taken from the ship by the assignees immediately after arrival, or the same will be transferred into lighters, landed on the quays, or warehoused at the expense and risk of the owners of such goods. If the discharging of the goods is detained by the entry not being passed, the agents of the steamer will have the power to enter them for account and risk of the owners of such goods. All goods shipped on deck at shipper's risk. The customs registration tax to be borne by the receivers.

(Signed) "For the Master,
"David Bowden.

"Dated in Amsterdam, 15th Dec. 1865."

The case was tried before the Lord President and a jury in April last, when the jury returned a special verdict, finding "That on or about the 15th December 1865 the pursuers shipped, at Amsterdam, on board the defenders' steam-vessel 'Ivanhoe' 5453 loaves of sugar in good order and condition, for the purpose of being conveyed to Leith, in terms of the bill of lading set out in the schedule appended to the issue; Find that the defenders did carry the said sugar to Leith in the said steam-ship, and did there deliver the same: Find that the said sugar, when so delivered, was not in the like good order and condition in which it was when shipped at Amsterdam, but was damaged by breakage of some portion thereof; but whether, by reason of the damaged condition of the said sugar when delivered, the defenders must be held in law to have commited a breach of their contract with the pursuers the jury are ignorant, and pray to be advised by the Court: And the jury further find that it has not been established by evidence what was the immediate cause of the damage sustained by the said sugar in the hands of the defenders, and they assess the damages at £55; but reserve it to the Court to enter up the verdict for the pursuers or defenders according as the Court shall be of opinion in point of law that in respect of the facts above found the defenders have or have not committed a breach of their contract with the pursuers as embodied in the bill of lading."

Both parties claimed that the verdict should be entered up for them.

A. Moncrieff and Lancaster for pursuers.

Gifford and Maclean for defenders.

The Court being equally divided in opinion, appointed the case to be reheard before themselves and three judges of the Second Division.

A. Moncrieff was heard for pursuers.

Gifford in reply.

Lord President—This is an action on a bill of lading, the object of which is to recover damages in consequence of the goods mentioned in the bill of lading having been delivered in a damaged condition at the port of delivery. The question submitted to the jury was whether the sugars of the pursuers were shipped in good order and condition at the port of Amsterdam, from which the defenders' vessel sailed, and were not delivered in like good order and condition at the port of delivery, in breach of the contract in the bill of lading. The jury, as they were directed to do, have returned a special verdict.

There are one or two principles of law applicable to this case which are beyond dispute. In the first place, in the ordinary contract of carriage, either by sea or land, between the owner of goods and the carrier, the obligation is usually absolute that the carrier

must carry the goods, and deliver them in the like good order and condition in which he received them; and if the goods are delivered in a damaged condition, the carrier is liable, without the necessity of inquiry into the cause of damage. It is also clear that under a bill of lading in the ordinary terms the responsibility of a shipowner is of the same character, with this difference only, that there is inserted in a bill of lading an exception of the act of God or of the Queen's enemies. It is not immaterial to consider the precise effect of that exception. Its meaning is plain—that if the loss or injury is caused by the act of God, or what is otherwise called *damnum fatale*, or by the act of the Queen's enemies, the shipowners are not responsible. But it is settled that in such a case it lies on the ship owners, if the goods are lost or injured, to prove that that was occasioned by one of the excepted causes. In the present bill of lading the act of God, enemies, pirates, thieves, restraint of princes, rulers, and people, &c., are excepted. And it would be most unreasonable, when the shipowner has undertaken in general terms to deliver in like good order and condition, that the owner of the goods, who has been out of possession of them in the meantime, should have it laid on him to negative all the excepted causes. That would lay on him an obligation which he could not fulfil. If we were here merely on the construction of this class of exceptions, I should hold the burden of proof to be on the shipowner, and that unless he could show that the loss or damage was caused by one of the excepted causes, he could not escape liability. But the difficulty here arises on a different clause in the bill of lading—a clause which appears in an unusual place, and looks as if it had been added as an afterthought. I do not mean an afterthought in this particular bill of lading, but in the framing of this style of bills of lading. There are a number of things contained in that bill of lading not necessary to be mentioned, but there is one part which reads thus—"Not answerable for breakage." What is the meaning of these words? There is no doubt that the party who is not to be answerable is the shipowner. Now, that can't mean that the shipowners are not to be answerable for breaking the goods themselves, because if they broke the goods deliberately, or by gross negligence, or by want of due care, they might still be answerable; and therefore I deal with the case as favourably for the pursuer as possible when I say that the word "breakage" is not used in an active sense. But what they are not to be answerable for is, the broken condition of the goods. If that be so, what is the effect of that stipulation? The shipowners are not to be answerable for the broken condition of the goods. Where? At the port of delivery. It cannot mean at the port of shipment, and there is no room for inquiry as to the condition of the goods during the interval between shipment and delivery. This is, in one sense, an exception from the general obligation to deliver in like good order and condition, but it is not an exception in the same sense as the other exceptions in the earlier part of the bill of lading, for this is a certain state of the goods for which the shipowners are not to be answerable, and when they produce the goods in that state, they bring themselves under that exception. The complaint is, that the goods are broken. The answer is, We are not answerable for that. What you complain of is the very thing for which we are not answerable.

It was argued, and I think successfully argued, that the shipowners will still be liable if the broken condition of the goods be the result of their own fault. Whether of gross fault or of mere neglect of ordinary diligence it is not necessary for the case to inquire. Then the only question is, does it lie on the pursuers to prove that the broken condition of the goods was brought about by negligence on the part of the shipowners, or does it lie on the shipowners to show that they were not negligent, or that they used due care as to the goods which turn out to be broken? I think the shipowners have not that burden laid upon them. It lies on the pursuers as owners of the goods to show that the broken condition of the goods has been caused by negligence or want of due care on the part of the shipowners. And my reason for that is, that I think the liability of carriers for negligence, leading to the breakage of goods intrusted to them, is not properly a liability resting on them in their character of carriers, but a liability resting on them in their character of custodiers of goods. It is not a question of the law of carriage, but one depending very much on rules of common law, much broader than any principle applicable to carriers alone. The exception of breakage disposes of liability for breakage arising from the law of carriage, and there only remains liability for negligence as custodiers—a negligence to be proved according to the ordinary rule, by the party alleging it. I therefore think that this verdict must be entered up for the defenders.

Lord Cowan—The issue adjusted for the trial of the case was in these terms.—"Whether, on or about 15th December 1865, the pursuers shipped at Amsterdam, on board the defender's steam-vessel 'Ivanhoe,' a quantity of sugar in good order and condition, to be conveyed in terms of the bill of lading contained in the schedule annexed hereto; and whether the defenders, in breach of the contract between the parties, failed to deliver the said sugar in like good order and condition, at the port of Leith, to the loss, injury, and damage of the pursuers?"

A special verdict was adjusted at the trial, which raises a legal question of importance, affecting the construction of bills of lading, and of clauses therein having for their object, the limitation of the liability of the owners similar to what occur in this instrument.

The jury have found—(1) that the sugar in question, when shipped on board of the defenders' vessel at Amsterdam, for delivery at the port of Leith, was in good order and condition; (2) that when delivered at Leith it was not in the like good order and condition, but was damaged by breakage; and (3) that it has not been established what was the immediate cause of the damage. These are the whole findings in fact, on which the Court has to determine whether in law the shipowners have committed a breach of contract.

The primary obligation in every bill of lading is to deliver the goods, received in good order and condition at the port of shipment, in the like good order and condition at the port of discharge. The obligation to that effect, undertaken by the master, is binding on the shipowner. Should the goods, when landed at the port of delivery, be found in a damaged state,—for the loss thereby caused to the owner of the goods the shipowner is certainly responsible as for breach of contract, unless he can plead the protection of some special limitation in the bill of lading freeing him from that responsibility.

In every such mercantile document there is an excepting clause, more or less comprehensive in its tenor and import, similar to that which first occurs in this bill of lading. The terms of the clause here are—"The act of God, enemies, pirates, thieves, restraint of princes, rulers, and people, vermin, jettison, barratry, and collision, fire on board, in hulk or craft, or on shore, and all accidents, loss and damage whatsoever, from other goods, by leakage, contact or otherwise, from machinery, boilers and steam and steam navigation, or from perils of the seas and rivers, or from any act, neglect or default whatsoever, of the pilot, master, or mariners, in navigating the ship, or from materials, or labourers in loading or discharging the goods, being excepted, and the owners in no way liable for any consequences of the causes above excepted."

To make this clause available the shipowner must prove that the damage of which the owner of the goods complains did result from one or other of the excepted causes. It will not suffice that he should prove due care and diligence in the shipment and stowage of the cargo, and in the navigation of the vessel. There must be evidence that the damaged state of the goods did result from one of the excepted causes. This does not admit of doubt as matter of general law. The principle is fully explained by Lord Moncreiff in the note to his interlocutor in the case of *Rae* v. *Hay and Others*, 7th Feb. 1832 (10 S. p. 303); and in adhering to the interlocutor, it was observed by the Lord Justice-Clerk:—"Parties in the situation of the defenders (shipowners) are not relieved of their obligation by proof of care; and in this case the goods have not been proved to have been lost by the wreck."

Besides the clause now adverted to, however there is another limiting clause in this bill of lading, on the effect of which the decision of this case mainly depends. It is in these terms:—"Weights, contents, measure, quantity, and value unknown, and not answerable for damage, leakage, lighterage, breakage, corruption. rust, torn wrappers, decay or mortality, and the wrong delivery of goods caused by error, or by insufficiency in marks or numbers."

A great deal of argument has been submitted to us on this part of the case, and several decisions in the Courts of England, of more or less application and importance, have been commented on. To these decisions I have given every attention. Clauses similar to what here occurs are, I think, to be regarded as tantamount to the notices of limitation of responsibility with which we are more familiar in the case of common carriers, and specially of railway companies. When such notices have been duly published, and the owners of the goods been thereby certiorated or put in the knowledge of their contents, effect will be given to the limitation declared by them, according to the sound import of the notices, as part of the contract of carriage between the parties. I consider that this clause must be so treated. I do not think that its insertion being in smaller type than the rest of the instrument affects the question. We must take it to form part of the contract constituted by the bill of lading. What, then, is its legal import and effect?

I am of opinion, subject to the observations to be afterwards made, that the burden of proving the cause of the damaged state in which the goods may be found on arrival is removed by this cause from the shipowner. He is free of liability though the cause of the damage be not ascertained, or be incapable of being made the subject of proof. While, under the usual exempting clause, expressed in similar terms to that which I have first quoted from this bill of lading,—the shipowner will be liable for the damage notwithstanding of his proving due care and diligence, unless the *cause* of the damage be established, and that one of the causes set forth in the exempting clause:—Under the subsidiary clause in this bill of lading he will be free of liability without leading such evidence. He has, by the special terms of the contract, so far freed himself of the *onus* that was incumbent on him. The cause of damage he is not bound to prove. It may have occurred from some accident, or from some other cause which is not explained or attempted to be explained by proof. Liability for the loss will only attach to the shipowner if it be established by evidence, on the part of the owner of the goods, that the damage arose from the fault or negligence of the master or other person for whom the owner of the ship is responsible. The *onus* of establishing such fault or negligence is, by force of this protecting clause, thrown upon the owner of the goods. To hold it operative only in the event of the cause of damage being proved by the shipowner to have been accidental, would, as I think, be to deprive it virtually of all effect. This I cannot do.

Applying these observations to the case presented by the special verdict for the opinion of the Court, I do not doubt that the damage suffered through breakage of the sugar is within the protecting or exempting clause. And therefore, but for the consideration I have now to explain, I would not have held it doubtful that the verdict fell to be entered for the defenders. But the difficulty I feel in arriving at that conclusion arises from the silence of the verdict with regard to due care and diligence having been taken in the shipment and stowage of the sugar, and in the navigation of the vessel on her voyage to Leith. It is an inherent obligation in the contract of affreightment that the shipowner, and those for whom he is responsible, shall take due care of the goods intrusted to them for safe carriage, in their shipment and stowage and during the voyage. As regards the stowage of the cargo, indeed, while the obligation is imperative by the law maritime of Europe, it is worthy of remark that it was the subject of special enactments in Scotland of so early date as 1466 and 1487. Mr Bell thus states the matter:—"That in taking the goods on board, in stowing them, and during the voyage, the master and crew shall take due care of the goods, according to the diligence prestable in the contract of location." That this care was actually taken I have always understood to be a fact, which the owner was bound to establish in every case, when the goods on arrival were found to be in a damaged condition. And this is no more than what the law requires in every such contract. The decisions in this Court in *Robertson* v. *Ogle*, 23d June 1809, and in *Pyper* v. *Thomson*, 4th Feb. 1843, demonstrate the truth of this proposition. In the last, in particular, the Lord Justice-Clerk Hope, with the concurrence of Lords Medwyn and Moncreiff, stated that he acknowledged as sound and just "the rule, that if a person gets a horse, or, indeed, any article belonging to another, for use, on the contract of hire, and brings back that animal or article much injured, he in whose custody and charge it was must be able to discharge himself of the care he was bound to bestow on the property of the other, by showing that he was not to blame in regard to the cause of the injury, and must, in the general case, be able to show how the

injury occurred." This is the diligence prestable in the contract of location, and it is the diligence incumbent on shipowners, apart from special stipulation, by which it may be modified. In every case which has occurred with which I am acquainted, the primary object of the shipowner has been to show that due care was taken by him of the goods. This being established, and nothing more appearing in the proof, he will still be liable for the loss, unless he prove the cause of the damage, where no additional protecting clause is to be found in the bill of lading. But when that clause occurs, as in this bill of lading, the shipowner will be free from liability, although the cause of the damage be left unexplained. To that extent he is protected; but I hesitate to hold that the protection thus secured by the shipowner can be carried farther, and frees him from the *onus* of establishing that the goods were properly shipped, stowed, and cared for on the voyage. In giving over his goods to be carried in the ship the owner of them is entitled to rely on this obligation by the shipowner being fully implemented. He has parted with his goods on that footing, and when thrown on his hands at the port of delivery in a damaged state,—although he must be held to have consented to dispense with the shipowner's obligation to prove the cause of damage, —it does not follow that he is to be held to have dispensed with the obligation on the shipowner to prove due care and diligence in the shipment and stowage of the goods. To give that large effect to the clause would be to render valueless the primary obligation in the bill of lading,—to deliver the goods in good order and condition. But in giving it the limited interpretation,—to which it ought to be subjected, as I think—the primary obligation to care for the goods and to carry them safely, remains,—although on due care being shown, the shipowner is by the contract free from liability for damage the cause of which cannot be traced.

Holding these views to be well founded, the question arises, whether the fact of the shipowners having used due care and diligence being left untouched by the terms of the special verdict,—the defenders can claim the benefit of the protecting clause in the bill of lading? Could it be assumed, without any finding to that effect, that the due care incumbent on the shipowners and their master and crew was taken the defenders would be entitled to prevail, in conformity with the principles I have stated But I cannot make that assumption. The verdict contains the whole facts to which the law has to be applied in the construction of the bill of lading. We are not entitled to add any finding, or to assume anything in fact, which is not set forth in the special verdict. And it must therefore, I think, be held that the defenders have failed to establish a matter of fact which it lay with them to establsh, and from the *onus* of proving which the protecting clause relied on does not free them. The benefit to the shipowner from that clause only arises and can only be pleaded, after he has satisfied the *onus* incumbent on him—to prove that in the shipment, stowage, and care of the goods during the voyage, all diligence was shown.

Entertaining these views, I come, but not without some hesitation, to the conclusion that the verdict must be entered for the pursuers.

Lords Curriehill, Benholme, and Neaves concurred with the Lord President.

Lords Deas and Ardmillan concurred with Lord Cowan.

In accordance with the opinion of the majority verdict entered up for the defenders.

Agents for Pursuers—Wilson, Burn, & Gloag, W.S
Agent for Defenders—P. S. Beveridge, W.S.

Saturday, July 6.

DOW AND MANDATORY *v.* JAMIESON.

(*Ante*, p. 107.)

Process—Advocation. Advocation dismissed in respect of non-appearance of advocator.

The respondent, in accordance with the suggestion of the Court, printed the note of advocation (with interlocutors advocated), and the interlocutors of the Lord Ordinary of 26th February and 5th June 1867. The case appeared in the Single Bills, and was sent to the Summar Roll. When the case was put out in the Summar Roll,

M'Kie, for the respondent, moved the Court, in respect of the advocator's failure to print, to dismiss the advocation.

No appearance was made for the advocator.

The Court, in respect of no appearance for the advocator, dismissed the advocation, and remitted to the Sheriff, finding the respondent entitled to expenses.

Agents for Respondent—Paterson & Romanes, W.S.

Saturday, July 6.

SECOND DIVISION.

ORR *v.* MEIKLE & SMITH.

Agent and Client—Authority to Compromise Action—Reduction. Circumstances in which held that an agent had authority from his client to compromise an action which he had received express instructions to defend.

This was a question as to the authority of a law agent to compromise a case, and resolved itself, according to the view taken of it by the Court, into one of fact. Orr had employed Meikle and Smith, writers in Kilmarnock, to borrow some money for him, which he says they failed to do; they, on the contrary, asserting that they had done all that they could and proposed. A loan of £150 was admittedly procured. Meikle and Smith, who had advanced this sum, and in security thereof taken both a bill from Orr and a bond over some heritable property in security of the loan, afterwards rendered to him an account of upwards of £21, for business done on his account in the transaction. Orr refused to pay, and instructed Mr May, writer in Largs, to defend the action. May was not entitled to practice in the Sheriff Court of Kilmarnock, where the action was brought, and he instructed Mr Andrews, writer, Kilmarnock, to attend to the case, and gave him a note of the defence to be stated. Andrews was of opinion that there was no good defence to the action, and wrote so to May, suggesting either a remit to the auditor or acceptance of an offer of compromise made by the pursuers. A long correspondence ensued between Andrews and May, from the early part of which it was clear that Orr would neither do the one thing or the other. In the latter part of the correspondence, May, in one of his letters, used the expres-