by the power of amendment permitted there, and in the Court of Session Act of 1868, there is a very valuable discretion vested in the Court, and a very expedient one if kept within reasonable bounds, but I am inclined to think it is one which must be very strictly watched, and may be carried too far, and the proposal here is, I think, to carry it far beyond the intention of the Act. The power of amendment in the Act is conferred in these terms—"The Sheriff may at any time amend any error or defect in the record in any action, upon such terms as to expenses or otherwise as to the Sheriff shall seem proper, and all such amendments as may be necessary for the purpose of determining in the action the real question in controversy between the parties shall be so made."

Now, in the first place, I do not think that an error or defect in the record is the same thing as a want of title in the pursuer as appearing on the face of record; and in the second place, this amendment cannot be made for the purpose of determining the real question in controversy between the parties, which was, whether the defender was indebted to the pursuer as an individual, which he was not. As the section of the Act does not apply, we must therefore fall back on the question whether it is competent to a pursuer to bring an action in one character and insist in it in another, and I think it is quite settled by authority that that cannot be done.

LORD MURE—The decisions quoted to us, particularly the case of *Smith* v. *Stoddart*, establish a principle which I think disposes of the proposition made by the pursuer that a party may proceed with an action in a different character from that in which he has brought it.

LORD SHAND—I concur. I am disposed to think that the power of amendment which the Court receives under the Act should be very favourably construed, and I have observed that so construed it saves many new actions being brought. The present proposal, however, carries the matter too far. At the time the action was raised the pursuer did not possess the character of executrix of her deceased husband, and therefore the action was stamped as an action by herself as an individual, and could not be at her instance as executrix, as she possessed no such character. The proposal is that having acquired that character she should amend the action as brought and sue in her new character of executrix. That appears to me to go quite beyond the power of amendment in the Act, and to create an entirely new pursuer, and I am therefore of opinion that the Sheriff is right.

LORD ADAM—This is simply an attempt to introduce a new pursuer as a party to the cause. There is no warrant for that in the 24th section of the Sheriff Courts Act of 1876, and I therefore think the Sheriff has reached a right conclusion.

The Court adhered to the interlocutor of the Sheriff-Principal.

Counsel for the Pursuer—Wilson. Agent—Thomas M'Naught, S.S.C.

Counsel for the Defender—A. S. D. Thomson. Agent—Adam Sheill, S.S.C.

*Friday, July* 19.

## FIRST DIVISION.

[Lord Fraser, Ordinary.

## DOMINION BANK OF TORONTO *v.* BANK OF SCOTLAND.

(*Dominion Bank* v. *Anderson & Company*, February 10, 1888, *ante*, vol. xxv., p. 324.)

*Bill—Liability of Agents Employed to Collect Bill—Unauthorised Cancellation—Proof of Loss—Onus.*

A bill having been protested for non-payment was afterwards forwarded to a bank agent who offered to try and obtain payment of it. The acceptors expressed their willingness to pay the amount of the bill and the protest charges on condition that they were freed from any claim for interest and expenses, and this condition was communicated to the holders. Without waiting for their reply the bank agent took payment of the amount of the bill and the protest charges, marked the bill "paid," and handed it over to the acceptors who deleted their signatures. The holders refused to agree to the condition mentioned, returned the money tendered to them in payment of the bill, and received back the cancelled bill. They then raised an action against the acceptors, in which they obtained decree for the amount of the bill and interest thereon, and for the expenses of the action. Before this decree could be enforced by summary diligence the acceptors were sequestrated.

In an action by the holders against the bank, whose agent had cancelled the bill, for payment of the bill, the interest thereon, and the expenses of the action against the acceptors—*held* (1) (*diss* Lord Mure) that the defenders were liable, it being proved that but for the cancellation of the bill, which was unauthorised, payment would have been recovered by summary diligence against the acceptors; and (2) that the defenders were not bound to proceed against the drawers before proceeding against the defenders, though the latter might be entitled to an assignation to enable them to proceed against the drawers.

*Opinion* (*per* Lord Mure) that the *onus* lay upon the pursuers to prove that payment could have been recovered by summary diligence on the bill against the acceptors; and *opinions* (*per* Lord Shand and Lord Adam) that the *onus* was on the defenders to prove the contrary.

The Dominion Bank, Toronto, were holders for value of a bill for £2939, 9s. 6d., dated 28th September 1886, drawn by the M'Arthur Brothers, Limited, upon and accepted by William Anderson & Company, merchants, Grangemouth. The Dominion Bank transmitted the bill to the National Bank of Scotland, Limited, London, for collection, and the latter bank presented it for payment on 7th May 1887 at the Bank of Scotland in London, where the same was payable, but payment was refused, and it was protested for non-payment.

On 16th May 1887 Mr Mackenzie, agent for the Bank of Scotland at Grangemouth, wrote to the National Bank of Scotland, London, in these terms:—"An acceptance of Messrs Wm. Anderson & Company of this town p. £2939, 9s. 6d. was presented at our London office, and payment refused on account of there being a dispute between the merchants who drew the bill and themselves. If the matter be now adjusted, you might send forward the document for collection."

On 21st May Mr Mackenzie again wrote to the National Bank in these terms:—"With reference to my letter of 16th inst., if the bills p. £2939, 9s. 6d. be sent on here for collection, it will in all likelihood be paid, but not the expenses, as the fault was not on Messrs W. Anderson & Company's side, at least so they say."

On 28th May Mr Mackenzie again wrote to the National Bank enclosing a letter which he had received from the acceptors, Messrs Anderson & Company, which was to the following effect:—"Confirming our former instructions to you, it just now occurs to us that immediate payment might be made provided the National Bank, London, gave a guarantee to hand over the bill to you on its return, and hold us scatheless in event of its miscarriage in any way whatever, also freeing us of expenses and interest. On hearing you have received such guarantee we will instruct you to pay."

The National Bank having received the bill from Canada, to which country they had remitted it when payment was refused in London, wrote to Mr Mackenzie on the 7th June as follows:—"Referring to your letter of 21st ulto., we now enclose for collection and remittance through your London office (bill being accepted payable in London) Anderson £2939, 9s. 6d. Should the acceptors decline to pay protest charges, 12s. 6d., please return protest to us. Acceptors will of course pay the remitting charge. We presented the bill to-day at your London office, but they state that they are still without instructions regarding it."

On 9th June Mr Mackenzie replied in these terms:—"With reference to your letter of 7th inst., I enclose herewith a communication received from W. Anderson & Company, from which you will observe that they would pay the 12s. 6d., together with the remitting charge, *re* the bill, on condition that they were held free of further responsibility. Please favour me with your instructions. *P.S.*—As Mr Anderson is presently living at Callander, and may not be here till Monday morning, we retain the bill till that day if we have not contrary instructions from you."

The enclosed letter was to this effect:—"We have yours stating the National Bank, London, will take payment of this bill, but we would like you to get a letter from them freeing us of interest and expenses as asked in ours of 28th ulto. The way we have been treated in the past is our excuse for being somewhat particular now."

On 13th June Mr Mackenzie having received no reply to his letter of 9th June, took payment from the acceptors of £2940, 2s., being the amount of the bill and 12s. 6d. of protest charges, and delivered up to them the bill perforated "paid." On the same day he sent a draft for the above sum to the National Bank accompanied by the following letter;—"I beg to enclose draft for £2940, 2s., being amount of W. Anderson & Company's acceptance referred to in your letter of 7th inst., with 12s. 6d. of protest charges. Of course you distinctly understand, in accordance with Messrs Anderson & Company's letter herewith enclosed, that so far as that firm is concerned the draft is accepted by you in settlement of the transaction without any reservation."

The enclosed letter was in these terms:—"Confirming our former respects we hand you payment of this bill on the distinct understanding that we are freed from all responsibility for interest, expenses, &c."

The National Bank then cabled the Dominion Bank for instructions whether or not they should agree to take payment of the bill on the conditions imposed by the above letter, and on 18th June they returned the draft for £2940, 2s. to Mr Mackenzie, with a note to the effect that they were not authorised to take payment of the acceptance on the conditions on which it was tendered, and requesting that the bill and protest should be returned to them. When the bill was returned to them it was found that not only had it been perforated "paid," but that Messrs Anderson & Company had deleted their name as acceptors.

The holders, the Dominion Bank, considering that they were unable to do summary diligence upon the bill in its altered state, raised an action against the acceptors on 12th July 1887. After hearing evidence the Lord Ordinary gave decree against the acceptors for the amount of the bill, with interest thereon from 7th May 1887, and found them liable in the expenses of the action. A reclaiming-note having been presented, the First Division on 10th February 1888 adhered to the Lord Ordinary's interlocutor with additional expenses.

The Dominion Bank then charged the acceptors for the sum due under the decree, but failed to obtain payment as Messrs Anderson & Company's estates were sequestrated on 15th March 1888.

The present action was raised by the Dominion Bank against the Bank of Scotland for payment of the amount of the bill, with interest thereon from 7th May 1887, and the expenses of the action and diligence against the acceptors.

The pursuers averred—"In consequence of the defenders, or their agent at Grangemouth, for whom they are responsible, having wrongfully and without the authority of the pursuers, delivered up the foresaid bill to the acceptors, and cancelled it in the manner before mentioned, and in consequence of the delay thereby caused, and proceedings which were rendered necessary by the defenders' fault and negligence, the pursuers have sustained loss and damage to the extent of the sum in the said bill, and interest due thereon, and expenses as sued for in the summons."

The defenders in answer denied these averments, and explained that any loss which the defenders might have sustained was caused by their own actings or those of their agents, the National Bank.

The pursuers pleaded, *inter alia*—"(1) The pursuers having, by the defenders' breach of duty and wrongful conduct, sustained loss, all as condescended on, the pursuers are entitled to decree in terms of one or other of the alternative conclusions of the summons."

Proof was led before the Lord Ordinary (FRASER) on 14th November 1888. The following evidence was given on the question whether Messrs Anderson & Company were solvent, and could have met the bill and the interest thereon if it had been possible to charge on it in July 1887:—Mr Spens, writer, Glasgow, the agent for the pursuers in the litigation with the acceptors, deponed—"The bill was placed in our hands first, I think, on 6th July 1887. . . . When I was first consulted, I asked the bill to be sent so that I might do summary diligence, but when I found it was cancelled, and that I could not do summary diligence, I instructed an ordinary action. . . . My impression is that we put warrants of arrestment in the summons in the action against Anderson; I am satisfied that we arrested in the hands of the Bank of Scotland. At that time Anderson & Company, I believe, were engaged in considerable trade. (Q) Did you try to find any other money?—(A) I did—I mean I made inquiries with reference to whether I could get money due to Anderson, and I was informed I could not. I did not get anything by arrestment in the hands of the Bank of Scotland." Mr Horsbrugh, trustee on the sequestrated estates of Anderson & Company, deponed—"From June 1887 to the date of their sequestration they were carrying on their business in the way they had been doing it for some time. They appeared to have met their current bills as they became due. Between the dates I have mentioned they met bills to the amount of £10,195, exclusive of the one in question. They were met and paid at their due dates. The bankrupts were also paying freights and other liabilities during the same period. They paid freights to the amount of £1406, besides other debts. I find Mr Anderson did a considerable amount of business in discounting bills for other people, but excluding these, I am of opinion that in order to meet his own bills and make payments in connection with his own business he must have paid between 13th June 1887 and the date of sequestration over £18,000. *Cross-examined.*—I endeavoured to ascertain where he got the money, and I find he discounted bills of other people with different banks to the amount of about £12,000, that he collected book-debts to the amount of £5000 or £6000, and he got in other sums making up just about £18,000. The difficulty I had was to distinguish what were his bills and what were other people's. At 25th June 1887 he was due the Bank of Scotland £344, and the Clydesdale Bank £3613—together £3958, and there was due to him by the Union Bank, £5, 19s. 7d., so that his total indebtedness to his three bankers was £3952. The book-debts were ordinary trade debts due to him by parties to whom he actually sold timber. Those parties were mostly in Scotland, I understand. The draft in question was applied as follows—Lodged on deposit-receipt in name of Mr Anderson's son, £2846, 11s. 5d.; sent to Mr Anderson's law-agents, £95—together £2941, the sum which he got back. The deposit-receipt stood in the son's name until 4th July. It was then uplifted and applied thus—In payment in cash to Dow & Company to enable them to retire some bills on 4th July, £862; in retiring bills of his own firm, £298, 12s. 7d.; and paid into current account of his firm with the Clydesdale Bank, £1685. The £862 paid to Dow & Company was to enable them to retire bills on which they were ostensibly the primary debtor; there were cross bills. The deposit-receipts were with the Bank of Scotland, I think, but I can hardly state distinctly. *Re-examined.*—Dow & Company and Anderson & Company were, I think, accommodating each other with their names. I think the bills could be traced to their ultimate liability." Evidence was also led to the effect that the drawers were persons in quite solvent circumstances.

The Lord Ordinary on 28th November 1888 gave decree against the defenders for the amount of the bill, with interest thereon from 7th May 1887, and for the expenses of the action and diligence against the acceptors, under deduction of £161, 0s. 3d., being the amount of dividend received by the pursuers as claimants in the sequestration of Messrs Anderson & Company.

"*Opinion.*—This is an action of damages brought by the Dominion Bank, Toronto, against the Bank of Scotland by reason of the latter having failed to collect the contents of a bill which was entrusted to them for that purpose. The bill was drawn by the M'Arthur Brothers, Limited, of Toronto, upon and accepted by William Anderson & Company, merchants, Grangemouth, for £2939, 9s. 6d., and dated 28th September 1886. It was made payable at the Bank of Scotland, London, at 180 days' sight from 5th November 1886, and therefore was due on 7th May 1887. It was indorsed by the drawers to the Dominion Bank, Toronto, and they are now the holders of it for value. The Dominion Bank sent the bill to the National Bank of Scotland, London, for collection, and the latter bank presented it for payment at the Bank of Scotland in London, when payment was refused, and protest taken. The agent for the defenders at Grangemouth did the banking business for the drawees William Anderson & Company, and hearing of the presentment of the bill for payment at the defenders' London branch, wrote on the 16th of May 1887, a letter to the National Bank of Scotland, London, in the following terms:—'An acceptance of Messrs Wm. Anderson & Company of this town, p. £2939, 9s. 6d., was presented at our London office, and payment refused on account of there being a dispute between the merchants who drew the bill and themselves. If the matter be now adjusted you might send forward the document for collection.' That is to say, the defenders, through their agents, intimated to the pursuers that they would collect the money. In the meantime, however, and before this letter was received in London, the pursuers had returned the bill to Toronto in order to preserve recourse against the indorsers, and intimated this; but it was added that 'if you remit us the amount and charges we shall have pleasure in recalling the bill by cablegram.' The history of what followed will be found in the opinion of the Lord President in the case of *The Dominion Bank* v. *Anderson & Company*, February 11, 1888, 15 R. 414, and it is unnecessary to do more in the way of narrative than to refer to that opinion. It was held in that case that by reason of the mistake (or the acting without authority) of Mr Mackenzie, the agent for the defenders at Grangemouth, the signature to the bill was cancelled and the bill marked paid. The result of this was that although the pursuers obtained re-delivery of the bill (which had been

sent on to the defenders' branch at Grangemouth), summary diligence could not be done upon it because *ex facie* it was cancelled. An ordinary action was rendered necessary at the instance of the pursuers against Anderson & Company in which the latter firm pleaded that they could not be sued upon the bill because of the cancellation, while at the same time they had got possession of the timber for which the bill had been granted without paying for it. Shortly after decree was obtained in this action Anderson & Company became bankrupt.

"Now, it is proved that if due diligence had been shown by Mackenzie, the defenders' agent, the bill would have been retired by Anderson & Company. Mr Horsbrugh, the trustee in their sequestration, which took place on 15th March 1888, proves that between 13th June 1887, when the bill was concelled, and the date of sequestration in March 1888, Anderson & Company were carrying on business to a large amount, and paid away to merchants with whom they dealt over £18,000. The money which had been sent to London in payment of the bill, and which was returned to Grangemouth, was lodged in bank on deposit-receipt in name of Anderson's son to the amount of £2846, 11s. 5d., where it remained until the 4th of July, when it was uplifted and applied by Anderson and Company to other purposes.

"A proof was led in the present action, and Mr Mackenzie was again examined as a witness. He repeated his former evidence with one unimportant variation, and gave his construction of the letters which passed between him and the National Bank in London in the same way in which he gave it in the former action, and in regard to which the Court held him to be quite wrong. He justified now, as he justified before, the delivering up of the bill for cancellation; but there was nothing new either in his evidence or in the evidence of other two witnesses to alter the opinion given effect to by the judgment of the Court—that he acted without authority. The variation from his former evidence consisted in this, that whereas he formerly said, 'If I had known that the bank did not agree to the conditions expressed in the letter of 9th, I would certainly not have given up the bill.' But now he says in answer to the question, 'If you had known that the bank did not agree to the conditions expressed in your and Mr Anderson's letters of 9th June, would you have given up the bill in exchange for the payment that you got,' he answers, 'On the 13th, certainly.' And he states that he was misreported on the former occasion, and now says that he would have delivered up the bill to Anderson & Company to be cancelled on the 13th of June, although he had known that the bank did not agree to the conditions expressed in Anderson & Company's letter of the 9th. This is a strange statement to make, coming from an agent whose duty it was to collect a sum of money, and who took payment upon conditions that he knew his principals had not agreed to.

"According to the evidence of Mr Horsbrugh, the sequestrated estate of Anderson & Company will not yield more than 1s. 6d. in the £—1s. per £ of this dividend has been paid, and the remaining 6d. it is anticipated may be soon obtained. Thus the Dominion Bank have obtained very little benefit from the decree against Anderson & Company, and they now make their claim against the Bank of Scotland on account of the *laches* of that bank's agent. No defence is here stated to the effect that Mr Mackenzie in what he did, did not represent the defenders. But the defence as stated by their counsel consisted of three parts—first, that there was no contract of agency proved. This is clearly negatived by the letters which have been produced, the analysis of which has been given by the Lord President, and the conclusion come to is thus stated in his opinion—'From that time (7th June) I apprehend that Mackenzie was acting for both parties. He did not give up the position of acting for the acceptors, but he undertook the additional duty of collecting for the National Bank, and in that character he goes on to correspond with the National Bank.'

"In the next place, it is said that although there might be a breach of duty the damages should be nominal, because the pursuers may have recourse against the indorsers who are proved by a witness adduced for the defenders (Malcolm Carswell, a timber broker in Glasgow) to be persons in solvent circumstances. This is no good answer for the defenders' breach of duty. Whether a good claim could now be made against the indorsers will depend upon the view taken by a Canadian Court as to whether recourse against them has not been lost, and the pursuers stated that they were quite willing to assign over to the defenders any claim that they may have against the drawers and indorsers.

"It is next said that in any view the damages claimable must be limited to the interest upon the bill from the time at which it fell due—a defence founded upon this, that the pursuers having got hold of the money when it was sent up to them in London ought to have kept it, and not returned it to Grangemouth. This defence, however, overlooks the fact that the money was sent up under a strict condition that no expenses or other charges for telegrams or commission should be exacted from Anderson & Company. If the money had been kept, it must have been kept under that condition which was the subject of controversy between the parties, and which condition the pursuers had rejected. The result of the whole matter is that the defenders must be found liable in the loss which the pursuers have sustained. It is proved that if Mackenzie had done his duty payment would have been obtained in the month of June. The amount of this damage consists of the principal sum in the bill and interest thereon, and of the expenses incurred to the pursuers in the former action.

"In regard to the expenses of the former action, the only point disputed was a sum of £86, 13s. 5d. of extra-judical expenses, for which decree was not obtained. A person who is damnified by the neglect of duty of another is entitled to full relief, and although these extra-judicial expenses could not be recovered as between party and party according to the rules applicable to costs, yet they were expenses to which the pursuers were put. Lord Kames in reporting the case of *Hogg* v. *Kennedy and Maclean*, 1754, M. 10,098, says—'I take it to be a general rule in all other affairs as well as in commerce that neglect of duty subjects the party to every risk and to every damage, except what he

can show must necessarily have happened though he had done his duty.' The account for the extra-judicial expenses does not require to be taxed, as parties have agreed upon a sum without taxation. Credit must be given for the dividend obtained (£161, 0s. 3d.) from Anderson & Company's estate. The amount of damage therefore would stand as follows:—

"1. Principal sum in bill referred to in this action and in the decree in the action *The Dominion Bank* v. *Anderson & Company*, £2939, 9s. 6d., with interest thereon at five per cent. from 7th May 1887 till payment.

"2. Expenses incurred by the pursuers:—

| | | | |
|---|---|---|---|
| (1) Amount of expenses incurred by pursuers in action *The Dominion Bank* v. *Anderson & Company* as taxed and decerned for per account No. 117 of process . . . | £164 | 16 | 6 |
| (2) Amount of additional expenses, being extra-judicial expenses incurred to pursuers' agents as adjusted . | 40 | 0 | 0 |
| (3) Amount of expenses of diligence on decree in said action per claim in sequestration . . . | 1 | 3 | 8 |
| | £206 | 0 | 2 |
| Deduct the amount of the dividend of 1s. per £ received by the pursuers on their claim in Anderson & Son's sequestration | 161 | 0 | 3 |
| | £44 | 19 | 11" |

The defenders reclaimed, and argued—Payment had really been taken by Mackenzie upon the terms of the letter of 7th June from the pursuers' agents, the National Bank. The liability of the defenders should at all events be limited to interest and expenses, as the pursuers' agents should not have parted with the draft which they received in payment of the bill. Further, the pursuers had not lost recourse against the drawers. All that they lost owing to the cancellation of the bill was that they could not do summary diligence upon it. They were therefore bound to proceed against the drawers before suing the defenders—*Muir* v. *Crawford*, May 4, 1875, 2 R. (H. of L.) 148; Chitty on Bills, 299; Bell's Prin. 342; Bell's Comm. (7th ed.) ii. 431, note; *Van Wart* v. *Woolley*, 3 B. & C. 439; Bills of Exchange Act 1882 (45 and 46 Vict. cap. 61), sec. 52. The pursuers were not entitled to sue the defenders for the whole amount of the bill, interest and expenses. To take the case of a law-agent, there was no authority for the view that a law-agent who had made an unsafe investment for a client was liable to be saddled with the debt *plus* an assignation of the security. When the Court had ordered the assignation of the security, that had been done in the interests of the law-agent to avoid a forced sale. This was not even the case of a law-agent, but only of one person being employed by another to collect money for him. All that the defenders could be held liable for was the loss ultimately ascertained to be due to their fault—*Potter* v. *Muirhead*, January 21, 1847, 9 D. 519; *Campbell* v. *Clason*, &c., December 20, 1838, 1 D. 270; *Urquhart* v. *Grigor*, June 12, 1857, 19 D. 853. There was, further, no evidence that the conduct of the defenders had caused any loss to the pursuers, as it was not proved that Anderson & Company would have been able to meet the bill if charged on it in July 1887.

The pursuers and respondents argued—The pursuers' agents could not have retained the draft, as payment had been tendered on certain conditions only. Mackenzie had had no authority for cancelling the bill, and it was due to his action in so doing that summary diligence could not be used upon it, and the money recovered from the acceptors. The defenders therefore, whose agent he was, were liable—Bell's Prin. 337. They must accordingly be held to occupy the acceptors place. The pursuers were not bound to proceed against the drawers first, from whom their might be a difficulty in recovering the money on a cancelled bill—45 and 46 Vict. cap. 61, sec. 64. The cases which had been decided with regard to analogous claims against messengers-at-arms and law-agents confirmed this view. The first class of cases referred to messengers-at-arms—*King* v. *Stevenson*, December 3, 1807, Hume, 344; *Chatto* v. *Marshall*, January 17, 1811, F.C.; *Campbell* v. *Clason*, December 20, 1853, 1 D. 270, *per* Lord Fullerton; *Murray* v. *Darno*, December 6, 1797, Hume, 323; *Dougan* v. *Smith*, July 3, 1819, Hume, 356; *Highgate* v. *Boyle*, February 12, 1823, 2 S. 204; *Davidson* v. *Mackenzie*, December 20, 1856, 19 D. ; *M'Millan* v. *Gray*, March 2, 1820, F.C. In the analogous cases of actions against law-agents for insufficient investments the principle on which the Court acted was that the agents were found liable for the whole debt and the security assigned to them —*Sim* v. *Clark*, December 2, 1831, 10 S. 85; *Ronaldson* v. *Drummond & Reid*, June 7. 1881, 8 R. 767, *per* Lord Craighill; *Guild* v. *Glasgow Educational Endowments Board*, July 16, 1887, 14 R. 944; *M'Lean* v. *Soady's Trustees*, July 19, 1888, 15 R. 966; *Black* v. *Curror & Cowper*, June 27, 1885, 12 R. 990. It was clear from the evidence that had the pursuers been able to charge the acceptors on the bill in July 1887 they would have obtained payment.

At advising—

Lord President—The history of the bill which is the subject of the present action is known to us from the inquiry in the previous case of *The Dominion Bank* v. *Anderson & Company*, who were the acceptors of the bill, and it is not necessary to detain the Court over these circumstances for the decision of the present case.

There is no doubt that Mr Mackenzie, the agent for the defenders at Grangemouth, became the agent of the Dominion Bank of Canada in collecting this bill, and it is not alleged that he was acting beyond his powers as the agent of the defenders, the Bank of Scotland. On the contrary, they accept the responsibility for what he did.

The bill had been protested for non-payment, and the reason of the non-payment seems to have been some dispute as to the quality of the cargo for which it had been granted. After that the bill was sent out to Canada in order to secure recourse against the drawers, and in these circumstances Mr Mackenzie came forward and