Saturday, November 16.

EXTRA DIVISION.

[Lord Cullen, Ordinary.

ROUGHEAD *v.* WHITE.

Partnership—Cautioner—Contract—Dissolution—Relief—Extinction and Discharge of Obligation under Partnership Bonds after Withdrawal from Partnership.

A became a member of an association, the object of which was to acquire heritable and personal property, and was appointed a trustee for the association. In 1901 A retired, having found a substitute member, in terms of the original copartnership agreement. At the time of his withdrawal the association had existing liabilities to the creditors in certain bonds, for which A was liable as one of the borrowers jointly and severally with the other members of the association. A obtained a bond of relief from the other members, by which they undertook to relieve him from any claim which might be made by any creditor under any bond, &c., signed by him on behalf of the association. After his withdrawal the bonds which he had signed were renewed, and also, by desire of the members of the association, were assigned by the original creditors to new creditors. In 1912 A brought an action against the members of the association and the representatives of deceased members, asking to have them decerned to relieve him by paying up the bonds or by giving him money to pay them.

Held (1) that the pursuer having become a party to the bonds as a principal debtor could not escape liability by merely withdrawing from the company, and that he was still a principal debtor and not merely a cautioner; and (2) that the renewal and assignation of the bonds were transactions within the scope of the company's business, and that in any event the question of their validity could not affect A's liability in the original bonds. Action *dismissed* as irrelevant.

On 20th May 1911 William Roughead, W.S., Edinburgh, *pursuer*, brought an action against Alexander White, residing at No. 19 Hillside Crescent, Edinburgh, and others, *defenders*, in which he sought to have the defenders ordained to relieve him by paying up certain bonds under which he was liable, or by paying him money with which to pay them up.

The pursuer averred—"(Cond. 1) In 1895 an association was formed under the name of 'The City of Edinburgh Property Association' by the pursuer, the defenders Alexander White, John Watson, Mrs Williamina Kay or Watson, Knight Watson, John MacNab, and James Ross junior, the now deceased James Ross, rope manufacturer, 23 Bath Street, Leith, and William Tait, S.S.C., conform to articles of agreement dated 12th, 13th, 18th, and 22nd February 1895, and recorded in the Books of Council and Session 25th February 1895. The object of said association was the acquisition or purchase of heritable as well as personal property in any part of Scotland, and as a first investment the heritable property detailed in schedule 1 to said articles of agreement. The respective partners undertook to subscribe the various sums of capital set opposite their names in the second schedule to said articles of agreement, amounting in all to £8250, whereof the pursuer's contribution was £500. The agreement provided (article 4) that the affairs of the association should be managed by the defenders Alexander White, John Watson, the said James Ross, and the pursuer, and the survivors and survivor of them, who were thereby appointed trustees for the association. The agreement further provided that the various parties should participate in the profits and losses of the association in proportion to the sums respectively subscribed by them. It also contained provision for any member being entitled to withdraw from the association at any time on finding a substitute member to the satisfaction of the association. The various members of the association duly paid up the sums of capital which they respectively undertook to subscribe. (Cond. 2) The association thereafter proceeded to purchase the heritable properties in the schedule to the agreement, and in connection with said purchase borrowed various sums of money on the security of said properties. In particular, the pursuer and the other trustees for the association, by the authority and on behalf of the association, along with the members of the association, granted the various bonds and dispositions in security specified in the summons, for sums amounting in all to £15,950. Said bonds and dispositions in security were executed by the pursuer and the other trustees as trustees and individuals. (Cond. 3) In the year 1901 the pursuer desired to retire from the association, and with the approval of the association the defender George Reid was substituted as a member in his place. The £500 subscribed by the pursuer to the funds of the association was thereupon repaid to him through Mr Tait, one of the secretaries of the association, and the remaining members of the association executed in pursuer's favour a bond of relief, dated 26th March, 2nd, 4th, and 20th April 1901, and recorded in the Books of Council and Session 1st July 1908. By said bond of relief they bound and obliged themselves, jointly and severally, and their respective heirs, executors, and representatives whomsoever also jointly and severally, to warrant, free, and relieve, harmless and scatheless keep, the pursuer and his heirs, executors, and representatives whomsoever, free of all claims and demands which might be made on him or

his foresaids by any creditor or creditors under any bond, bill, or note signed by him, whether as trustee or as an individual, on behalf of said association in connection with the properties of said association or any of them, or the affairs of said association, and of any claim of relief which they as members of said association or any of them might have against him, and bound and obliged themselves, conjunctly and severally, and their respective foresaids, jointly and severally, should any demand or claim be made against the pursuer or his foresaids by any creditor of said association or any member or trustee thereof, without any proceedings other than a demand by the pursuer or his foresaids, to intervene between him and them and such demand or claim, and take upon themselves, jointly and severally, all objections or defence to such demand, and relieve him and his foresaids of all questions in relation to such demand, or otherwise to make payment of the amount of such demand or claim, with any interest thereon and expenses to the pursuer or his foresaids in order that he or they might satisfy such demand or claim. (Cond. 4) Although ten years have elapsed since the pursuer ceased to be a member or trustee for said association, the defenders have taken no steps to terminate his liability under the said bonds and dispositions in security. On the contrary, instead of paying off said bonds and dispositions in security or obtaining a discharge of the pursuer's liability thereunder at the periods when under agreement with the lenders they became payable, they have from time to time renewed said loans for a period of years. Further, since the date of the said bond of relief the said bonds and dispositions in security have, by the desire of the granters of said bond of relief, including the individual defenders and the defenders James Ross's trustees, or the said James Ross, been assigned by the creditors therein as follows:— . . . The defenders thus, after granting said bond of relief, borrowed said loans from new lenders, to whom the pursuer's personal obligations were transferred, instead of paying off said loans, or at all events obtaining a discharge of the pursuer's personal obligations, and thus extended the pursuer's personal obligations, contrary to the intention of said bond of relief and to their duty to the pursuer. Further, during said period the said James Ross has died, and his estate is about to be distributed, and the said William Tait has been sequestrated under the Bankruptcy Acts. The pursuer has lodged a claim in his sequestration."

The pursuer pleaded, *inter alia*—"(1) The pursuer having signed said bonds and dispositions in security on behalf of and as a trustee for the defenders' association, he is entitled to be relieved by the defenders of the obligations so undertaken by him, with expenses. (2) The defenders having unduly delayed to obtain a discharge of the pursuer's liability under the bonds and dispositions in security libelled, and having extended the period of his liability under said bonds by obtaining renewal of the loans therein contained, and by re-borrowing said loans from new lenders in breach of their obligation and duty to the pursuer, the pursuer is entitled to decree as concluded for, with expenses."

The defender pleaded, *inter alia*—"(2) The pursuer's averments being irrelevant and insufficient to support the conclusions of the summons, the action should be dismissed."

On 10th April 1912 the Lord Ordinary (CULLEN) sustained the defenders' second plea-in-law and dismissed the action.

Opinion.—"I am of opinion that the pursuer is not entitled to the decree for which he concludes.

"Under the articles of the association the pursuer was not (without forfeiture) in a position to withdraw from membership except on his finding a substitute approved by the other members. The articles make no provision for withdrawing members being relieved of obligations undertaken by them on behalf of the association during their membership. Accordingly this was a matter open for arrangement among the parties when the pursuer withdrew in 1901 with the consent of his fellow-members. The bond of relief then granted to him represents the arrangement which was made on the subject. It imports that the pursuer was to withdraw without obtaining himself then discharged of the obligations which he had undertaken in the bonds in question; that these obligations were to continue for the benefit of the association; and that the pursuer had agreed to rest content with the obligation to relieve him which he obtained from the granters of the bond of relief. The bond of relief, however, is silent as to the period of time during which the pursuer's said personal obligations were to continue undischarged. The pursuer does not maintain that he was entitled to call upon the granters to procure him discharged so soon as he received the bond. He concedes that he was bound to wait. The only express stipulation in the bond as to the granters procuring him discharged is limited to the case of his being called on by a creditor to pay—an event which has not happened. It appears to me that the parties must have had in their minds some period other than that of the whole endurance of the association—which is indefinite—as being that during which the pursuer's said personal obligations were to lie undischarged. Now the business of the association under its articles was the purchasing or acquiring of heritable property by way of investment, and the articles contemplate the granting of heritable bonds for the purpose of providing purchase money. It was in this way that the bonds here in question came to be granted. If and when any property came to be re-sold by the association in pursuance of its objects the bond would no longer be required and could be paid off, but until such a re-sale the bond would continue in ordinary course. It seems to me that the fair and reasonable implication of

the arrangement embodied in the bond of relief *quoad* the period of endurance of the pursuer's personal obligations with which it does not expressly deal, is that failing the intervention of a demand by a creditor on the pursuer, he was content to allow these obligations to lie until a re-sale of the subjects by the association in pursuance of its business enabled the bonds to be dispensed with, and put the association in a position to have them discharged. It is not suggested that the association is conducting its business otherwise than in a *bona fide* manner, or that, in still continuing to hold the properties subject to the bonds in question, it is not acting in due accordance with its objects as assented to by the pursuer himself when he joined it as one of its original members. It may be an unsatisfactory position for the pursuer to continue undischarged of these personal obligations, and perhaps when he withdrew from membership he may have assumed that the association would not require to utilise the bonds to which he had been a party for so long a time as has happened, which may be due to the present state of the property market. But if he desired more prompt terms of release he should have stipulated for them.

"The pursuer founds on the fact that the agreements for the duration of the loans under the bonds current when he withdrew have expired, having been replaced from time to time by further agreements; and that four out of the five bonds have, in consequence of the original creditors requiring their money, been assigned to other lenders. When, however, the nature of the business of the association, and the purposes for which, in pursuance of its objects, the bonds came to be granted are duly considered, these transactions in the handling of the bonds so as to enable them to remain a fund of credit without incurring the wasteful expense of providing new bonds whenever an existing loan was called up, represent the normal method of dealing such as I think the pursuer must have contemplated that the association would follow.

"The pursuer further founds on the fact that one of the granters of the bond of relief has died, and that another has been sequestrated. He does not, however, allege that the association is not at present duly constituted in terms of its articles, or that it is not carrying on its business in terms of these articles in a *bona fide* manner. If I am right in the view which I have taken as to the implied understanding regarding the subsistence of the bonds, I do not find in the facts any sufficient ground for holding that they give the pursuer right to an immediate release. No authority was cited in support of the pursuer's proposition.

"Following these views I shall sustain the defenders' second plea-in-law and dismiss the action."

The pursuer reclaimed, and argued—The pursuer had, now that he had withdrawn from the association, become merely a cautioner, and consequently neither the partnership agreement nor the bond of relief applied. The agreement might be final as regards his partnership rights, but did not in any way affect his rights as a cautioner. The bond did not deal with the question at all, and was not exclusive of the common law rights which he had as a cautioner. He had a right to have his caution put an end to at some time on equitable grounds, for the Court would not continue a cautioner's obligation for an indefinite time—*Doig* v. *Lawrie*, January 1903, 5 F. 295, 40 S.L.R. 247. Here the Court had to decide what was a just and fitting date for terminating the caution. Further, if the partners of the association were to be regarded as the principal debtors, he was freed from his obligation, for under the Mercantile Law (Scotland) Amendment Act 1856 (19 and 20 Vict. cap. 60) any change in the firm freed him from his caution. Under the bond he ought to have certain persons bound to him in relief, and these had now disappeared. Secondly, the pursuer had entered into no contract with the creditors to whom the bonds had been assigned, and was under no obligation to them. On the ground, too, that the time of the obligation had been extended by the new firm he ought to be set free.

Argued for the defenders—The relations of parties were all along contractual, and there was no room for the common law rights of a cautioner. The parties had entered into the bonds under a contract which gave them no right to withdraw till the purposes of the association were fulfilled. The pursuer had found a person to put £500 into the business, but not a proper substitute who would take up his liability under the bonds, and therefore he was still under the contract. If he remained liable, it was true that the defenders were bound to relieve him, but that obligation only contemplated distress. Unless there was something in the bond of relief which imported a new duration of the pursuer's obligation, it must be held to be the original indefinite obligation.

At advising—

LORD KINNEAR—The pursuer in this case seeks to have it declared in the first place that the defenders are bound, conjunctly and severally, to free and relieve him of all liability undertaken by him under and in virtue of five specified bonds and dispositions in security. The defenders do not dispute their liability to relieve the pursuer in the event of any demand or claim being made against him by the creditors in these bonds, and the declarator sought does not in terms appear to go beyond the declaration of that right.

But then the pursuer goes on to formulate operative conclusions for the purpose of giving practical effect to his right of relief. He asks that the defenders should be decerned and ordained to free and relieve him by making payment—that is, immediate payment—to the creditors in the bonds of all sums—principal, interest, and penalties—due under them, or otherwise by producing discharges by the creditors of all personal obligations undertaken by

the pursuer; or otherwise, that they should be decerned and ordained to make payment to him of the sum of £20,000, so that he may pay up the bonds and obtain discharges for himself.

I am of opinion with the Lord Ordinary that the pursuer has made no relevant averments to support either of these conclusions. The facts are quite simple. I do not know that they are materially disputed. At all events I take them, for the purposes of the question of relevancy, from the pursuer's own statements. He says that in 1895 he became a member of an association, which appears to have been a trading company, called the Edinburgh Property Association, the object of which was to acquire or purchase heritable and personal property in any part of Scotland. He entered into this association along with certain other parties, to wit, the defenders personally called, and another deceased member whose representatives are called as defenders. The partners subscribed various sums of capital, the pursuer's contribution being £500. He not only became a member of the association, but also became one of the managers along with certain of the defenders, and was appointed with them a trustee for the association. The business of the association was carried on until the year 1901, when the pursuer retired, withdrawing from the membership upon an agreement with the other members, which was entirely within the conception of the original contract of copartnery, by which another person was substituted as a member in his place. The effect of his withdrawal under agreement with his copartners was obviously to free him from any obligation that might be undertaken by the copartnery after he had ceased to be a member. He ceased to be a member of the copartnery in 1901, and had no liability or concern with anything that was done by it since that date.

But then at the time of his withdrawal there were existing liabilities to the creditors in the bonds specified in the summons, and he was undoubtedly liable as one of the borrowers, jointly and severally, with the other members of the association to the creditors in these bonds. The money was borrowed while he was still a member, a manager, and a trustee for the company. He undoubtedly became liable to the creditors in the bonds, and also to his copartners as joint-debtor with them, to pay his proportion of any liability which might ultimately be made good against them all. That was a subsisting liability of which he could not be relieved by merely withdrawing from the company while it was still subsisting. It would have been perfectly easy, so far as legal methods are concerned, for him to have obtained a discharge from that existing liability just as effectual as his discharge from future liabilities. But that could only have been done by, in the first place, an agreement between the pursuer and the defenders, and, in the second place, an agreement between the pursuer and the defenders on the one side and the creditors in the bonds on the other. That it was legally possible there can be no question; but for whatever reasons, the agreement was not made, and there may have been good reasons for the parties declining to enter into such an agreement. At all events it was matter for agreement if it was to be done at all; but as to the agreement that was made, its effect was, in my opinion, to leave this gentleman's liability in the bonds just as it was before he retired from the company.

But then he says that, having retired in the year 1901, he now finds that although ten years have elapsed the defenders have taken no steps to terminate his liability in the bonds and dispositions in security. "On the contrary," he goes on to aver, "instead of paying off said bonds and dispositions in security or obtaining a discharge of the pursuer's liability thereunder at the periods when under agreements with the lenders they became payable, they have from time to time renewed said loans for a period of years. Further, since the date of said bond of relief the said bonds and dispositions in security have, by the desire" of the defenders, been assigned by the original creditors to new creditors who take their place as creditors in the bonds. His case is accordingly twofold. In the first place he contends that by the mere lapse of time he is entitled to say—"I should have been relieved by this time, and you must relieve me now." In the second place he contends that the defenders have entered into a new transaction to which he was not a party, and by so doing have already relieved him.

As to the first of these grounds I am of opinion, with the Lord Ordinary, that there is no foundation for the plea so maintained by the pursuer. He became a party to the bonds as a principal debtor. He remained a principal debtor along with his copartners after he had ceased to be a member of the association. We must presume that he knew that in the ordinary course of business the company could either pay up the bonds or leave them standing according to the convenience of the business for which the loans were originally contracted. He retained no kind of control over his former partners in the management of the business, and he acquired by agreement no new right which would enable him to intervene and say the time has now come when these bonds must be paid. He was under a subsisting liability, as to which he made no sort of stipulation that it should be diminished, or that it should be treated by the company otherwise than might be convenient for them in the ordinary course of business, or that anything should be done by the company to expedite a settlement with the creditors, or that he should obtain relief otherwise than in ordinary form in the event of a claim being made against him.

I omitted to say, what I ought to have said before coming to the legal aspect of the case, that on his withdrawal from the company he obtained from the continuing

members a bond of relief, by which they undertook to relieve him and keep him harmless and scatheless and free of all claims and demands which might be made on him by any creditor or creditors under any bond, bill, or note signed by him, whether as trustee or as an individual, on behalf of the association, and bound themselves that should any demand or claim be made against the pursuer by any creditor of the association or any member or trustee thereof, they, without any proceedings other than a demand by the pursuer, would take upon themselves the defence to such a demand, and relieve him of all questions in relation to it. He had, therefore, a bond of relief by which in the event of the creditors in any of these bonds making a demand against him he should be relieved by the remaining members of the company, and that, in my opinion, was the sole obligation undertaken by the surviving members in his favour when he left the company.

It was maintained, however, on behalf of the pursuer that by reason of his having ceased to be a member of the company, or ceased to have any personal interest in the moneys borrowed under these bonds and dispositions, he had become a cautioner merely, and was entitled to be relieved of his cautionary obligation by virtue of what were said to be the equities of a cautioner. One of the equities of a cautioner is, it was contended, that he may at any time withdraw from any future liability imposed upon him by his cautionary obligation. I think the argument baseless in both its branches. In the first place, I know of no general equity that will enable a cautioner to withdraw from future liabilities irrespective of the terms of the obligation by which he is bound. He may withdraw or may not withdraw according as his cautionary obligation allows him to do so, but his right to withdraw must always depend upon what it was he undertook to guarantee and what the terms of the guarantee were. We were referred as authority for the pursuer's proposition to the case of *Doig* v. *Lawrie* (5 F. 295). I think the opinion of Lord Low in that case brings out very clearly indeed the distinction between the conditions upon which a cautioner may put an end to his cautionary liability and the conditions of the present case. In that case the pursuer had given a guarantee to a bank by which he guaranteed all sums for which the defender might become liable up to a certain amount, the amount being £6500. Lord Low said—"It must therefore be taken that the obligation undertaken by the pursuer was gratuitous, and its duration was indefinite and unlimited. I do not think that the pursuer is in such circumstances bound to continue his obligation longer than it is convenient for him to do so." That is to say, a person had gratuitously undertaken a cautionary obligation to the bank for indefinite sums for an indefinite period, guaranteeing the transactions of the bank's debtor so long as that obligation should subsist. Certain debts had been incurred for which the cautioner was undoubtedly liable, and he then said — "I must withdraw. The guarantee is good up to this date, but I do not propose to continue it any longer for indefinite future liability, of which I know nothing"; and he was found quite entitled to do so. But that is a totally different position from the pursuer's, which is that of a person who as a principal debtor became bound by a fixed definite obligation, indefinite only in respect of its duration, but which, according to its own terms and legal effect, would subsist until the creditor should call up his money or the debtor should pay. I can see no reason in equity by which he should be entitled to relief from that undertaking irrespective of the terms to which it binds him.

But if there were any such general or universal equity in favour of cautioners it would not apply here, because, for the reasons I have already given, the pursuer is not a mere cautioner. He is a principal debtor as in a question with the principal creditors, and he remains liable, as long as he remains a principal debtor, to pay his proportional contribution as in a question with his co-debtors.

The second ground of the pursuer's argument was quite different. He said that by obtaining from the creditors assignations of the bonds to new creditors the defenders had entered into a new transaction, after he had ceased to be a member of the company, by which he was in no way bound; he was bound, he argued, only to the creditors with whom he had personally contracted, and the defenders had made a new obligation for him with persons of whom he knew nothing. If he had maintained, upon that state of the facts, that the new bonds were, so far as he was concerned, invalid and ineffectual, and that he was under no obligation as debtor in these bonds to the assignees of his original creditors, I think there might be some very obvious answers in law to that contention. But whether that would be well founded or not I do not think it necessary to determine, because that would raise a question which it would be impossible to decide in the absence of the creditors in the bonds. That is not the foundation of the pursuer's case, even if the contention were well founded in law. The plea that the transactions are new transactions, by which he is not bound, does not support the conclusions of the summons, and is not a reason for compelling the debtors in the bonds to pay their debts immediately, or alternatively to make payment to the pursuer of a sum to enable him to pay the debts for them. There is no logical connection between the contention and the conclusions of the summons whatever, and his remedy would be totally different.

But although the argument to which I have just referred was pressed, the action is based on the hypothesis, not that there is no liability, but that there is liability; it is only on that hypothesis that the pursuer is liable in the bonds libelled in his summons, that he can claim that the defenders should relieve him of that lia-

bility. I think the hypothesis upon which the whole case proceeds is plainly and obviously that there is a good liability against him. Whether that be so or not there is no relevant ground to my mind for compelling the defenders to relieve him of such liability, if it be good, because it is a liability still attaching to him, and if it be bad, because his remedy in that case would be to get rid of the bonds altogether.

I come, therefore, to the conclusion upon the whole matter that the Lord Ordinary was right in sustaining the second plea-in-law for the defenders, which is that the pursuer's averments are irrelevant, and that the summons should therefore be dismissed.

LORD DUNDAS—I agree in thinking that the interlocutor reclaimed against is right. Mr Murray, for the pursuer, complained that the Lord Ordinary had gone wrong, because he proceeded wholly upon the bond of relief as finally regulating the pursuer's rights in the matter, and ignored what counsel described as the pursuer's position at common law as a cautioner for the principal debtors, his former copartners in the association. It was to this latter aspect of the case that Mr Murray directed his able argument. The distinction suggested by counsel seems to me to be one rather of words than of substance. It is probably sufficient to point out that it is not accurate to describe the pursuer as a cautioner. He is not, and never was, a proper cautioner. He was a partner, and he retired from the partnership concern. By the terms of the articles of agreement the pursuer was entitled to withdraw from the association without finding a substitute member to its satisfaction, in which case he would have forfeited all sums of money contributed by him to the funds of the association, and in addition would have been bound to pay, when called upon by the association, his proportion of any loss which it might sustain. Alternatively, he might find a substitute to the satisfaction of the association. The pursuer chose the latter of these courses. The terms upon which he should withdraw became therefore a matter for arrangement and consent between him and his copartners. In the bond of relief, prepared by the pursuer and granted by his partners at his request, one finds what appear to be the terms upon which he and they agreed that he should retire. It cannot be said that since the bond was granted the defenders have acted otherwise than in a lawful and normal course of carrying on their business—a course that was within their powers, and must be taken to have been within the contemplation of all parties when the articles of agreement were entered into. In these circumstances I am unable to see how the pursuer can now, after an interval of years, appeal to the rights open by law to a partner who is entitled to retire from his business *simpliciter* without consents asked or given, still less to any right that may be available to a proper cautioner, which, as already pointed out, the pursuer is not and never was. I have some sympathy with him in his anxiety to be finally quit of all concern or possible liability in connection with the association, but I cannot see any sufficient ground upon which we could grant the decree sought for by the summons. I think we must adhere to the Lord Ordinary's interlocutor.

LORD MACKENZIE—I am of the same opinion. I would only add that I think that what your Lordships have already said disposes of another point that Mr Murray argued—namely, that the pursuer was free in consequence of the death of James Ross and the sequestration of the estate of William Tait. This point seems to me to depend on his establishing that the rights which he has are those of a cautioner at common law. If they are regulated by the terms of the bond of relief, then this point, depending as it does on his success in establishing that his position was that of a cautioner, fails. What the Lord Ordinary has said upon this question is perfectly sound, viz., that there is no allegation that the association is not at present duly constituted in terms of its articles, or that it is not carrying on its business in terms of these articles in a *bona fide* manner. Therefore when one fully apprehends that the bonds which are libelled in the summons in this case are the original bonds upon which the pursuer became a co-debtor, I think there is nothing in this point.

I confess I share with my brother Lord Dundas his sympathy for the pursuer in the position in which he is placed; but after careful consideration I think it necessarily follows from the whole facts of the case that his rights must be regulated by the bond of relief, and that he cannot succeed upon the very skilful argument presented by Mr Murray to the effect that his rights were not to be regulated by the bond, but emerged independently of the bond when once it was shown that he had taken the necessary steps to withdraw from the association and to have another member substituted in his place. It would have been possible had he been able to get the consent of the association to make a bargain in different terms, but looking to the terms of the bargain upon which he went out, I think the conclusion at which your Lordships have arrived is inevitable.

The Court adhered to the Lord Ordinary's interlocutor and dismissed the action.

Counsel for the Pursuer and Reclaimer—Murray, K.C. — Watson. Agent — Allan M'Neil, S.S.C.

Counsel for the Defenders and Respondents—Macmillan, K.C.—Gentles. Agents —Somerville & Watson, S.S.C.