

the bank. The bank could charge any of the three. Moreover, the charge could be made by the bank in circumstances that would involve the greatest personal hardship, because another clause of the bond provides that if there is a change of partnership, all the new partners and their heirs and representatives are still to continue bound just the same as before. Now, if these three gentlemen cease to be partners of William Anderson, Son, & Co., and other partners take their place, the new firm would be liable as the old one, and these gentleman would be liable as individuals, even although they had ceased to be members of the firm, and would be liable along with the firm. Now, if that is the meaning of the bond as to one firm, it has the same meaning as to the other, and therefore I hold that the firm of Grierson, Clark, & Co., and the two gentlemen who are the individual partners of it, are liable to the bank *singuli in solidum*. That is to my mind the plain construction of the bond in regard to the obligation to the bank. But then it appears—and it is a conceded fact—that the party for whose benefit the cash credit was created, and who is therefore in a question of relief principal debtor to the other cautioners, is the firm of Wm. Anderson, Son, & Co. For the benefit of that firm the cash credit was created, and the bond was granted. That raises a different question. It was ingeniously and forcibly pleaded in argument that if there are five cautioners there must be three others, and besides the firm of William Anderson, Son, & Co., the three individual partners of it are bound in the same manner as the individual partners of the firm of Grierson, Clark, & Co. But the answer to that is plain. We are now in a question of relief among co-obligants. In that question I apprehend that William Anderson, John Anderson, and Francis Clark are principal debtors, in respect of their being partners of the company for whose benefit the cash credit was created. His Lordship here enumerated the parties bound as cautioners, and continued—Now here I apprehend the construction of the obligation must just be on the same principle as our construction of the obligation in regard to the bank. If all are bound conjunctly and severally—that is to say, *in solidum*—the relief must be regulated on the same principle, because, if one of the partners of Grierson, Clark, & Co. is made to pay the whole amount to the bank, he must have relief from his own firm, and the individual partners of it. The obligation to the bank is the foundation of the obligation in a question of relief, and therefore I adhere to the interlocutor of the Lord Ordinary. The other judges, but Lord Neaves with some hesitation, concurred.

ADV.—CLARK *v.* KINLOCH.

Counsel for the Advocate—The Lord Advocate and Mr A. Moncrieff. Agents—Messrs Burn, Wilson, & Burn, W.S.

Counsel for the Respondents—Mr Scott and Mr F. W. Clark. Agent—Mr Bridgeford, S.S.C.

This is an advocacy from the Sheriff Court of Lanarkshire. The action is one of damages for injuries sustained by the pursuer (Kinloch) from having fallen into a hole in the footpath of the public road leading from Holytown to Bellshill, while travelling along the road with her husband. It is directed against the surveyor of the Glasgow and Shotts Turnpike Road Trustees, where the accident happened, on the ground that he failed to have the hole in the footpath properly fenced or lighted by a lantern, to prevent accidents to the passengers along the road. In defence, the defender pleaded that it was no part of his duty, and indeed was beyond his power, to make alterations and improvements on the road, either by the erection of fences or otherwise, without the express order of the road trustees; and therefore that the averments of the pursuer inferred no responsibility on the part of the defender, even had such alterations been necessary or proper

for the safety of the public, which he denied. Further, the defender pleaded that although for any fault or omissions he might be liable to his employers, he was under no obligation to make reparation for injuries which may be sustained by the public. The Sheriff-Substitute found, upon the pleas and proof led, that the fall of the pursuer was caused by a slope in the footpath formed for the purpose of giving access to certain neighbouring lands; and said slope having been made prior to the appointment of the defender, there was not such *culpa* on his part as to render him personally liable; and the Sheriff-Substitute accordingly absolved him. The Sheriff (Alison) upset this interlocutor, and found the defender liable in damages, which he assessed at £50. His Lordship held the facts to establish the insufficiency of the road, and the liability of the surveyor for the state of it. At common law, and under the 101st section of the General Turnpike Act, 1 and 2 Vic. c. 43, he was therefore responsible for the injuries which the pursuer sustained. The defender advocated, and after argument the case was to-day taken to avizandum.

Saturday, Nov. 25.

FIRST DIVISION.

COLONEL GRAHAM *v.* THE WESTERN BANK.

Counsel for the Pursuer—Mr Pyper and Mr Macenzie. Agent—Mr D. J. Macbrair, S.S.C.

Counsel for the Defenders—The Solicitor-General and Mr Shand. Agents—Messrs Davidson & Syme, W.S.

This case was formerly tried by a jury, who returned a verdict for the pursuer. This verdict was set aside, and a new trial granted. The case was in the roll to-day on motions by both parties—one by the defenders to fix the new trial for the Christmas sittings, and one by the pursuer to delay the trial till after the disposal of an appeal to the House of Lords, which has been presented in the similar case of Mr Robert Addie against the bank. The Court to-day refused to take the trial at Christmas, and also refused at present to say that it should be delayed as asked by the pursuer. Both motions were therefore refused.

NAPIER *v.* GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY.

Counsel for Petitioner—Mr Gifford and Mr Strachan. Agents—Messrs M'Lachlan, Ivory, & Rodger, W.S.

Counsel for Respondents—The Solicitor-General, Mr Gordon, Mr Clark, and Mr Johnston. Agents—Messrs Gibson-Craig, Dalziel, & Brodies, W.S.

In this case, which was debated last session, their Lordships to-day unanimously recalled the interlocutor of the Lord Ordinary (Mure), and refused the prayer of Mr Napier's petition. The circumstances are stated in the Lord President's speech.

The LORD PRESIDENT—This is an application by Mr Napier, shipowner and carrier, founded on the Railway Traffic Act of 1854. It is directed against the Glasgow and South-Western Railway Company, and complains that that company have contravened the Act by certain facilities and advantages they have given in the shipment of goods between Ardrossan and Belfast to a vessel called the Oscar, which advantages and facilities are not given to the petitioner, who has a vessel called the Lancefield plying between the same ports. It would appear that the railway company has a line terminating at or near the harbour of Ardrossan, and they have engaged in the endeavour to establish a trade between Glas-

A report of the Registration Cases for the Month will appear in an early Number.