dronach Distillery Company, dated 16th August 1852, authorising him "to act and vote at all meetings in the sequestration of Andrew Johnston, &c., with the same powers as belonged to" the said Company. Now, looking to the provisions of the Bankrupt Statute, it is obvious that personal liability is not involved in the sequestration procedure, and that these creditors are not liable personally to the trustee for expenses incurred by him in the action of multiplepoinding merely in respect of their appearing, voting, being ranked, and being paid a dividend in the sequestration. For such personal liability, special and separate ground must be established.

In the next place, I am of opinion that the mandate given to Coutts in 1852 to act and vote in the sequestration is not *per se* a sufficient authority to entitle him to enter or to instruct the trustee to enter on a separate litigation several years afterwards. But then, I am also of opinion, that these defenders, the creditors for whom Coutts acted as mandatory, could effectually extend their mandate; or, in other words, could ingraft upon the original mandate to act in the sequestration, a further mandate to Coutts, authorising him to instruct the trustee to present and support the claim in the multiplepoinding on the footing of their liability for expenses. I have read the whole correspondence, beginning in July 1852 and extending down to 1864, and I have arrived at the conclusion, 1st, that Mr Coutts, the original mandatory, did undoubtedly authorise the trustee to present and support the claim in the multiplepoinding, and to incur the expenses now sued for; 2d, that Coutts did this in the knowledge that there were no available funds in the sequestration to meet these expenses, and that it was a matter beyond the sequestration—a matter, the entering on which involved personal liability for expenses; and 3d, that the partners of the Glendronach Distillery Company, and more particularly Walter Scott, the leading partner of the Company, did know that this procedure in the multiplepoinding involved separate personal liability, and that there were no available funds in the sequestration, and did authorise Mr Coutts to appear and act for them at the meeting for instructing the trustee in regard to the multiplepoinding. This he did accordingly. At that meeting, and subsequent meetings which Coutts attended, and in the sederunt of which he is entered as "mandatory for the Glendronach Distillery Company," instructions were accordingly given to the trustee to lodge a claim in the multiplepoinding, and to conduct the proceedings in which these expenses were incurred.

The question raised now is precisely the same as if Coutts had paid these expenses, and were claiming ralief from the creditors in whose name he had acted.

In point of law, there is no doubt that in such a case Coutts must have proved his mandate, and there is as little doubt that in the present case the trustee can only enforce personal liability against these creditors in respect of Coutts' authority to him, by proving, just as Coutt's himself must have proved, a sufficient mandate by these creditors authorising Coutts to act for them. He is not bound to produce a formal mandate, but is bound to instruct authority.

On this question of fact, I have arrived at the conclusion that a sufficient mandate to Coutts has been proved; and if he were suing for relief the partners of the Glendronach Company, these partners could not in fairness and justice refuse to relieve him of the expenses which he had disbursed in an attempt, though unsuccessful, to bring a fund into distribution among the creditors of Johnston. Then, if they could not have refused to relieve Coutts, they must, I think, be liable in this action. Although I have the misfortune to differ, as I understand, from your Lordship in the chair, it is satisfactory to me to think that I do not differ on any point of law, but only on the question of fact, whether, by the correspondence read with reference to the facts and circumstances of the case, a sufficient mandate to Coutts has been instructed. On that point I agree with the Lord Ordinary and Lord Deas in thinking the evidence sufficient.

The LORD PRESIDENT dissented. The question, he said, was no doubt one of fact, but it involved the well known and most important principle of bankruptcy law laid down by Professor Bell (1 Com. 413) that no creditor can be made to pay any expenses out of his own pocket without his concurrence. The correspondence founded on instructed, no doubt, that the defenders authorised Mr Coutts to oppose the bankrupt's application for discharge, but that was a litigation of a very limited and inexpensive kind, and not the litigation referred to in this action. So far as could be seen from the correspondence, the defenders, although they knew of the bankrupt's claim under his father's estate, never heard of the nice question in the law of vesting which arose only in 1863 on the bankrupt's death, and he could not, therefore, see how it could be held that they authorised that question to be litigated at their personal expense. The letter from the defenders of 2d May 1864 was the chief evidence founded on, but it did not prove authority to do what Mr Coutts did. Again, there were thirty-two creditors on the estate, only a few of whom were said to have authorised the litigation. Had Mr Coutts authority to undertake the expense of the whole litigation? If the decision to be pronounced was a good one, then he had; but to hold that he had such authority was not warranted by the evidence.

The Court by a majority (LORDS DEAS and ARDMILLAN) adhered to the Lord Ordinary's interlocutor.

Agent for Pursuer—William Millar, S.S.C.
Agent for Defenders—Alex. Morison, S.S.C.

Wednesday, October 21.

GLEN *v.* CALEDONIAN RAILWAY CO.

Railway Company—Dividend—Interdict. A proprietor of railway stock applied for interdict against the Company—(1) paying dividend for the previous half-year, and (2) applying certain monies, raised under special acts, for other than the specified purposes. Note passed, but interdict *refused*, the complainer having been offered caution for any loss he might suffer by such refusal, while the Company might suffer great damage by the interdict being granted.

Alexander Glen, proprietor of £500 Caledonian Railway (General Terminus) Guaranteed Stock, presented this note of suspension and interdict against the defenders, craving the Court (1) to interdict, prohibit, and discharge the respondents from declaring or paying any dividend or dividends on any of the ordinary stocks or shares of the said Caledonian Railway Company for the half-year ending 31st July 1868, and from carrying any sum

to the credit of the revenue of the half-year ending 31st January 1869; and (2) to interdict, prohibit, and discharge the respondents from applying the sums of money raised in virtue of the powers conferred by The Caledonian Railway (Edinburgh Station) Act 1866, and The Caledonian Railway (Lanarkshire and Midlothian Branches) Act 1866, or any part of said sums, so far as still in the hands of the said Company, in or towards payment of any dividend or dividends on the stocks or shares of the said Company, and from applying said sums of money, or any part thereof, otherwise than for the purposes specified in the said Acts respectively, and from issuing any farther stock or shares of the said Company in virtue of the powers conferred by the said Acts, or any of them, and from raising any farther money thereby. The pleas maintained by the complainer were, that the accounts of the Company for the half-year ending 31st July 1868 had not been certified by the auditors in terms of the Railway Companies (Scotland) Act 1867; and that it was illegal and *ultra vires* of the respondents to divide as profit premiums obtained, and at the same time to charge against capital loss sustained on the issue of stocks or shares; that, in respect of the proposed debit to capital and of the undercharge to revenue on account of plant, the complainer was entitled to interdict; that no profits available for payment of dividend on ordinary stock having been earned, the complainer was entitled to interdict; that the respondents having applied the capital raised under the Balerno Branch and other Acts of the Company to purposes not authorised by the said Acts, but in contravention thereof, and there being no occasion or intention at present to apply the unissued capital above mentioned for the purposes of the Acts authorising the issue thereof, the complainer was entitled to interdict; and that, in the present circumstances of the Company, as above condescended on, the respondents were not entitled to declare or pay any dividend on the ordinary stocks or shares of the Company for the half-year ending 31st July 1868, or to carry any sum to the credit of revenue for the next half-year.

Interim interdict was granted; but thereafter, on 12th October 1868, the Lord Ordinary on the Bills (Lord Kinloch) pronounced this interlocutor: —"The Lord Ordinary, having heard parties' procurators, and made avizandum, and considered the proceedings, passes the note, but recalls the interdict formerly granted: Prohibits the clerk from issuing a certificate of the recall till Thursday next, the 15th current, at three o'clock; and if a reclaiming note against this interlocutor shall have been then presented, till the same shall have been disposed of.

"*Note.*—There is a twofold interdict now sought —1st, an interdict against the railway company paying any dividend on their ordinary stock for the half-year ending 31st July 1868; 2d, an interdict against the issue of any further shares under certain Acts of Parliament, or the application of the funds arising on the issue of such shares to any other purpose than those specified in these Acts.

"The interdict is applied for at the instance of a holder of Caledonian Railway (General Terminus) Guaranteed Stock, to the extent of £500.

"I. In regard to the application for interdict against payment of a dividend on the ordinary stock, it is primarily to be noticed, that the procedure prescribed in this matter by the 30th section of the Railway Companies (Scotland) Act 1867, has been followed out by the company. That statute enacts, that 'no dividend shall be declared by a company until the auditors have certified that the half-yearly accounts proposed to be issued contain a full and true statement of the financial condition of the company, and that the dividend proposed to be declared on any shares is *bona fide* due thereon, after charging the revenue of half-year with all expenses which ought to be paid thereout, in the judgment of the auditors.' In the present case 'the directors recommend a dividend on the ordinary stock at the rate of 1½ per cent. per annum, less dividend on that portion of the stock charged against premium account,' involving payment of a sum of £28,083, 5s. The auditors, in reference to this proposal, certify that they 'have carefully examined the books and vouchers of the company for the half-year ending 31st July last, which we find correct;' and further, 'care has been taken to bring into the accounts all claims affecting revenue; and we are satisfied that the stock on hand, and the traffic, and other balances, are fairly represented. In conclusion, we certify, that the half-yearly accounts proposed to be issued contain a full and true statement of the financial condition of the company as shown in the books, and that the dividend proposed to be declared on the ordinary stock of the company (exclusive of the stock raised under the Clelland and Mid-Calder branches, and other Acts in 1865, proposed to be paid as heretofore, out of premium account, in accordance with the resolution of the shareholders) is *bona fide* due thereon, after charging the revenue of half-year with all expenses which in our judgment ought to be paid thereout.'

"It is next necessary to notice the effect which the statute gives to this report by the auditors. The statute adapts itself to two cases. The one is, where the directors differ from the judgment of the auditors; in which case 'such difference shall, if the directors desire it, be stated in the report to the shareholders; and the company in general meeting may decide thereon, subject to all the provisions of the law then existing, and such decision shall, for the purposes of dividend, be final and binding.' There was, in the present case, no difference between the directors and auditors; and this alternative did not therefore arise.

"The other alternative is thus stated in the statute: 'But if no such difference is stated, or if no decision is given on any such difference, *the judgment of the auditors shall be final and binding.*'

"It was maintained by the respondents that this statutory provision excluded the objection now stated to the payment of the dividend; for the dividend proposed to be paid is exactly what the report of the auditors has sanctioned. The Lord Ordinary finds it difficult to avoid a conclusion to this effect. Undoubtedly the report of the auditors is not to all intents conclusive. It does not absolutely fix everything as the auditors state. *Its effect is limited to the payment of the dividend.* As to this, the statute bears expressly, 'the judgment of the auditors shall be final and binding:' in other words, it shall be held, without appeal from their decision, that the dividend proposed is one which, in the circumstances, it is right and fitting the company should pay. It is difficult to put on these words any other meaning than one. It appears to the Lord Ordinary that this statutory provision was intended to preclude the very thing which the complainer is now seeking to urge—a suspension of the dividend till inquiry is made into

a vast variety of debateable matters, got up by a recusant shareholder, it may be on very unscrupulous averments. The statute provides a short-hand, and for all practical purposes a satisfactory method for determining whether a proposed dividend is to be paid or not. The accounts of the company may still be fully open to inquiry and objection, and, if need be, rectification. But as regards the dividend it is meanwhile to be paid:—'the judgment of the auditors' (says the statute) 'shall be final and binding.'

"The complainer met this view by an argument which was undoubtedly relevant—viz., that the certificate of the auditors was not the statutory certificate; and was therefore to be entirely thrown aside. The ground upon which this was maintained was that the auditors merely certify that the accounts contain 'a full and true statement of the financial condition of the company, *as shown by the books;*' whereas they should not, as the complainer contends, make any reference to the books, but certify the condition of the company absolutely and unqualifiedly. And he did not hesitate to say (it was indeed necessary for his argument) that the reference to the books was a purposely inserted qualification; and that, *within the knowledge of the auditors*, the true state of affairs was not shown in the books, and was altogether different from what their certificate imported.

"The Lord Ordinary could give no weight to this argument, which implied neither more nor less than a charge of gross and deliberate fraud against the auditors, such as could not, to say the least, be assumed without the most pregnant evidence. He considers that he must read the certificate as importing to the full what the statute required, so far as within the possible cognizance of the auditors. As auditors, they could of course only report on the documents before them. The books of the company were naturally the primary subject of examination. But the auditors were not limited to these. They were entitled to call for all manner of vouchers in the company's possession; and if these had the effect of in any wise qualifying the statements in the books, the auditors were bound to set this forth as a sacred part of their duty. To suppose the auditors in the present case not to have done so, is to impute to them a breach of duty and flagrant dishonesty which no man is entitled lightly to charge on another. Their own statement is, 'We have carefully examined the books and vouchers of the company for the half-year ending 31st July last, which we find correct.' When they proceed to state that the accounts prepared for the shareholders set forth the true condition of the company as shown in the books, the Lord Ordinary understands them to certify the accuracy of the accounts absolutely and positively, so far as within their widest means of information; and auditors cannot be asked to do more. In the operative part of the certificate the statement is express and unqualified, that the dividend proposed to be declared on the ordinary stock 'is *bona fide* due thereon, after charging the revenue of half-year with all expenses which in our judgment ought to be paid thereout.' The Lord Ordinary cannot discover sufficient grounds on which to take from the certificate its statutory character or its statutory finality.

"It is to state the argument lower, but still in a way sufficient to maintain the refusal of the interdict, to say that, at the very least, the certificate of the auditors could only be impugned on strong and overwhelming grounds, instantly verified. It would not be sufficient that the complainer brought into dispute the accuracy in point of fact of their statements, by a mere denial on his part, unsupported by evidence. Nor will it be enough merely to raise doubts of their accuracy on vague and inconclusive implications. It will be further insufficient to stir a debate on points of speculation and opinion, on which there may reasonably exist a difference of opinion between persons equally well informed and authoritative. It is notorious that there are a great many such points in regard to the administration of railway companies. There is nothing less settled by fixed and binding rule than what part of the expenditure should be debited to capital, and what to revenue. It was doubtless with this circumstance fully in view that the legislature reposed so much of discretion in the auditors in regard to the matter of dividend. They are to report whether the proposed dividend is right and fittiug, 'after charging the revenue of the half-year with all expenses which ought to be paid thereout in the judgment of the auditors;' and 'the judgment of the auditors shall be final and binding.'

"It appears to the Lord Ordinary, that, assuming the competency of impugning the report of the auditors, the complainer has not set forth any grounds sufficient to warrant him in setting aside their certificate, and preventing payment of the proposed dividend.

"(1) The chief topic of discussion was a sum of £112,436, 9s. 3d., said to be composed of charges which ought to have been stated against revenue in the half-year ending 31st January 1866, and which have never yet been so stated. The complainer contended that this sum must still be paid out of revenue before there can be any dividend; and the amount is sufficient to exhaust the present dividend several times over. But assuming that a sum of this amount was some years ago omitted to be charged against revenue (which the complainer gives the strongest reasons for holding), it is one of the nice questions of railway law how in after years such omission is to be rectified; and the Lord Ordinary is not prepared to take the rough and ready plan of ordering it to be deducted from any year's revenue that may come in question. The fact may be undoubted that this charge was omitted to be made against revenue in the account of 31st January 1866; and it does not follow by any means that the rectification of this omission is *de plano* to insert the charge in the account of 31st July 1868. There is also to be kept in view the fact that in February and March 1868 the shareholders, in general meeting, sanctioned the recommendation of a Committee of Inquiry, to the effect that this very sum should be charged to capital, on which footing things have been since that time proceeding. It may no doubt be made a question whether this could legally be done by the shareholders. But the Lord Ordinary is not prepared to decide on the spot this question in the negative, to the effect of stopping payment of the dividend. Besides, he cannot overlook the circumstance that this very plea of the complainer was set forth as a ground for stopping payment of the previous half-year's dividend, and is at this moment under discussion in the Court on a passed note, but refused interdict. It may not be incompetent to renew the plea with reference to a new dividend, but the Lord Ordinary feels somewhat indisposed to cut short the discussion in the other case by an anticipatory decision in the present.

"(2) Another topic of discussion largely handled

before the Lord Ordinary regarded what was called the Premium Fund. It appears that, in regard to certain lines authorised by Parliament, the company arranged to give the shareholders the unusual benefit of a dividend before the line was completed and opened for traffic. They were enabled to do this by selling the shares at a premium; the premium just being procured by means of this unwonted boon, and the amount of premium received was devoted to the payment of this anticipatory dividend. There is presented here a transaction, about whose character and competency a great deal might be said in any lecture on railway law. But the Lord Ordinary finds difficulty in making the transaction bear on the present question of dividend. The complainer says that the premiums in question should have gone to increase capital, and not have been employed in paying dividend; and he may perhaps be right in this, but it does not seem a sound logical inference which he goes on to make—that *because* premiums were wrongfully introduced into revenue, in this case, therefore, when other shares were sold at a discount, the *discount* should be charged against revenue, which would be equally wrongful. In regard to the accounts approved of by the auditors, and made the foundation of the proposed dividend, the Lord Ordinary understands that the premium fund is not introduced into these accounts as part of the receipts to be disposed of; and as little is there comprehended the dividend on these peculiarly situated shares, which is paid by means of this fund. It is the ordinary dividend, *exclusive of what arises on these shares*, and the ordinary dividend as payable out of the other funds of the company, which is alone dealt with. Accordingly, what is said, as already quoted, is this: 'The directors recommend a dividend on the ordinary stock, at the rate of 1½ per cent. per annum *less* dividend on that portion of the stock charged against premium account.' And what the auditors certify is, 'that the dividend proposed to be declared on the ordinary stock of the company, *exclusive* of the stock raised under the Cleland and Mid-Calder branches and other Acts, in 1865, proposed to be paid as heretofore out of premium account, in accordance with the resolution of the shareholders, is *bona fide* due thereon, after charging the revenue of half-year with all expenses which in our judgment ought to be paid thereout.' The whole matter of the premium fund seems therefore fitly laid aside from the present discussion.

"(3) It was contended by the complainer that a large amount of parliamentary expenses incurred in former years had never been charged to revenue, and ought to have been put to the debit of the present half-year's account. But in regard to this matter the parties are at direct variance in point of fact; the respondents contending that all the parliamentary expenses of former years had been arranged for, either *eo nomine*, or under a general arrangement of outstanding charges. The Lord Ordinary had no sufficient materials for determining this discussion in matter of fact in favour of the complainer.

"(4) It was further maintained by the complainer that a great deal too little had been charged against revenue for the half-year in question, in respect of deterioration of plant. But this is just one of these speculative points in railway administration, on which the Lord Ordinary could not decide, and on which the Legislature peculiarly intended to trust the discretion of the auditors. With regard to a sum of £32,546, 9s. 5d., said to have been charged against capital in respect of plant, without the sanction of the shareholders, the parties are at direct issue on the fact.

"(5) Finally, the complainer maintains that the Company is insolvent, and should pay no dividend; —he might add, should shut up their shop. It is scarcely necessary to notice a wild plea of this sort. It proceeds on a mere confusion in accounting. The complainer estimates as nothing, and only fit to be struck out of the account, what is called 'Balances per Capital Statement, £262,122, 1s. 8d.,' because this on its face is a super-expenditure of capital, above the receipts from shares and loans. But there stands to answer this the *unraised* capital in shares and loans, to a greatly larger amount, which, of course, cannot be thrown out of view in any general estimate of the Company affairs.

"There are several of the points now touched on which may well deserve further investigation; and in this view the Lord Ordinary has passed the note. He considers the complainer entitled to have the points inquired into, not merely as a general matter of accounting, *but with special reference to their bearing on this particular dividend*, which can only be done under the passed note. But he thinks that in regard to none of them is there anything made so clear and tangible as would warrant him in interdicting the dividend, in the face of the certificate of the auditors, supposing this unlimitedly open to him.

"II. The Lord Ordinary has but a few words to add in regard to the second branch of the application for interdict. This applies to the particular shares authorised to be raised by the two Acts of Parliament, specially set forth in the prayer of the note. It is said that the Directors have intimated an intention of applying to Parliament for authority to abandon the lines in question; and an interdict is sought against their raising any additional stock under these Acts, or at least applying the money so procured in any other way than the Acts respectively authorise. The Lord Ordinary thinks it a sufficient answer—1st, that a mere intended abandonment does not warrant the Company to desist from their statutory operations (as to which they have obligations as well as privileges), so long as the desired authority has not been obtained; 2d, that it is not to be assumed, and has not been shown by evidence, that the Directors will employ any money raised by issuing these shares in any other than the statutory way. It is impossible, in a legal proceeding like the present, to proceed on general surmises from alleged irregularities in former proceedings. It would be a shorter process to apply on this ground for an interdict against all further administration, of any kind whatever.

"The Lord Ordinary would only say in conclusion, that, in determining this question of interdict, he has, according to the invariable practice of the Court, taken into special consideration the mode in which the interests of both parties would be affected by a judgment one way or other. By refusing the interdict, no substantial prejudice is done to the complainer. He has been offered caution against whatever consequences his small holding may sustain by the interdict not being granted; and, it is presumed, only declines this caution because he thinks it unnecessary. But if the Company were interdicted from paying a dividend on their ordinary stock on the ground taken up by the complainer that the revenue is insufficient for the purposes,

then not merely the shareholders would be deprived of their dividend, but the most serious consequences might arise to the credit of the Company, and its position in the share market. If the law, indeed, imperatively demanded this interdict, such considerations would go for nothing. But so long as this remains even in doubt, they are considerations of the highest moment in the question of judicial discretion.

"The complainer asked that, if the Lord Ordinary's view was unfavourable to his demand, he should be enabled to take the opinion of the Inner-House, without any alteration taking place on the existing state of things. Considering that the Court now meets within three days, the Lord Ordinary viewed this as reasonable. Indeed he looks on it as for the interest of the Company itself that, in place of a constant appeal every half-year to the Lord Ordinary on the Bills, the case for one reason or another not getting further, the opinion of the Inner-House should at once be obtained."

The complainer reclaimed.

GIFFORD (LORD-ADVOCATE GORDON, CLARK, and LAMOND, with him) for reclaimer.

YOUNG, WATSON, and JOHNSTONE, for respondents, were not called on.

At advising—

The LORD PRESIDENT thought that in the present question of discretion they ought to adhere to the Lord Ordinary's interlocutor. A great many important questions were raised in this suspension, which it was impossible to determine at present. But plainly any interdict granted now must have an important effect upon the administration of the Company during the trial of these questions, and must be granted very much in the dark, both as to its grounds and effect. He could not say what disastrous effects it might not have on the Company; while, looking to the complainer's interest, that seemed in no such danger. He had been offered caution for any loss he might sustain, which offer he had not accepted, being satisfied evidently that the Company would indemnify him in case he was proved to be right. Plainly he could suffer no damage by delay, while the Company might be great losers if the interdict was granted.

LORD DEAS was of the same opinion. Nothing would induce him to grant the prayer of the complainer except convincing proof that he would suffer loss and damage by refusal, in the event of a final judgment in his favour. Now, the complainer was offered caution, so that his personal interest was protected, and he held no mandate from the public to protect their interest.

LORDS ARDMILLAN and KINLOCH concurred.

Agent for Complainer—W. Mitchell, S.S.C.

Agents for Respondents—Hope & Mackay, W.S.

Wednesday, October 21.

SECOND DIVISION.

MELROSE *v.* SPALDING.

Reference to Oath—Competency of Reference—Objection. Held that it was no objection to a reference to oath that the party referred to had been adduced as a witness in the cause and cross-examined by the party making the reference.

This was an advocation from the Sheriff-court of Roxburghshire, of an action in which a claim was made on account of plaster work done by the pursuer. The defence was a denial of employment. The case came before the Court last session, when a remit was made to the Sheriff to frame findings in facts, he having failed to do so in terms of the Act. These findings having been framed, the case returned to the Court of Session, and the Court adhering to the judgment of the Sheriff (RUTHERFURD) and Sheriff-substitute (RUSSELL) decerned against the defender. The defender thereupon referred the whole case to the pursuer's oath.

KEIR for the pursuer objected to the reference, on the ground that in the evidence led in the action in the Court below the pursuer had been adduced as a witness for himself and had been cross-examined by the defender.

J. C. SMITH for the defender was not called upon.

The Court sustained the reference.

The pursuer's deposition having been taken before the Lord Justice-Clerk, the Court to-day, after hearing Mr SMITH, held the oath to be negative of the reference.

Agent for Advocator—James Somerville, S.S.C.

Agent for Respondent—David Milne, S.S.C.

Wednesday, October 21.

HAMILTON *v.* THOMSON.

Agent and Client—Business Account—Employment. Circumstances in which *held* that employment was proved, and that a party was liable to a law agent in the amount of his business account.

John Thomson, S.S.C., Edinburgh, raised an action in the Sheriff-Court of Bute at Rothesay against James Hamilton, residing at Auchreoch in the island of Arran, for £42, 4s. 1d. sterling, "being the amount of an account for law business performed and disbursements made by the pursuer for and on the employment of the defender, commencing the 27th day of April 1866, and ending the 29th day of January 1867." &c. The defence stated was—(1) non-employment; (2) non-liability. The record having been closed in the Inferior Court, and the Sheriff having allowed a proof, the defender, in respect the claim exceeded £40, advocated in terms of the Act of Parliament, 6 Geo. IV. cap. 120, sec. 40. The advocator, in his reasons of advocation, made a long statement as to the history of an action of suspension in which the pursuer acted as agent, and the question in the case is one of fact, Whether the pursuer, who acted in that matter for the defender, had authority or not?

The Lord Ordinary (MURE) pronounced the following interlocutor and note:—"The Lord Ordinary, having heard parties' procurators, and considered the closed record, proof, productions, and whole process, advocates the cause: Finds, that in the month of April 1866 the pursuer was employed by Mr John Emslie, writer in Ardrossan, to enter appearance for the defender and oppose a note of suspension and interdict, which had been served upon the defender at the instance of Alexander M'Kinnon, farmer in Arran, in order to stop a sale under a poinding at the instance of the defender, and that the account now sued for was incurred on the said employment: Finds that, when the pursuer was so employed, Mr Emslie was acting as agent for the defender in the recovery of a bill for £13, due by M'Kinnon to the defender, to the proceedings following upon a protest on which bill