which bills of exchange, though not complete, have been allowed to be completed, but bills of exchange and promissory-notes are different things. A promissory-note is a promise by the maker of the note to pay, and it ought to be to pay to somebody, and bills have been sustained in which the drawer's name was blank, but the bill, when this was filled up, was quite regular, being merely an inchoate obligation before this was done.

The law says that what was intended to be done in order to put the bill in proper form may be carried out in accordance with the intention of the parties. Hence the drawer or intended drawer may fill in his name, and here there is the mandate of the drawer, and the acceptance of the drawee.

It appears to me that the power to complete is not an authority in the present case. In case of a promissory-note the payee does not write upon the note at all. Here it is proposed to supply the want of Dr Duncan's name in the body of the note by appending his address after his death, but it is not by means of an address that a promissory-note is completed, but by the promise to pay to a particular party. It seems to me that the filling up of an address would be entirely to change the character of the document as it came from the hands of the promissor. To put in Dr Duncan's name would be to alter the document as it stands, and we must take it as it stands, as all that the defender meant to promise. The document has been produced in process, and the defect cannot now be filled up.

It is a question of delicacy whether the action should be allowed to proceed at all, but the tendency of our law is, if possible to allow an action to proceed, if we can by so doing get at the real matter in dispute between the parties. I recommend that we should find that this is not a valid promissory-note, and that the debt can only be established by the writ or oath of parties.

LORD BENHOLME — I concur. I cannot for a moment doubt—(1) that this is not a valid promissory-note, and (2) if it is to be regarded as an ordinary obligation, that it is struck at by the Act of 1696, cap. 25. The difficulty is whether this summons is so libelled that if this document be withdrawn it can still be sustained. Does the action not fall in consequence? The conclusion of the summons is as follows (*reads conclusion*). I am rather inclined to take the view that the summons may stand as regards the sum concluded for, and may be supplemented by proof—a reference to the writ or oath of the defender being the only competent mode of proof. While we hold the document which is mentioned in the conclusion not to be a promissory-note or a valid obligation, we might still sustain the debt, which does not depend upon the validity of the document. I therefore agree with Lord Neaves, and think that the Lord Ordinary's interlocutor should be recalled, and that we should allow a proof by writ or oath of the debtor.

LORD JUSTICE-CLERK—Upon the first point, namely, as to the legal effect of the writing, I concur in the opinions delivered. I was a good deal struck with the cases in Hume quoted to us. But I am satisfied that this document does not fall within that class of cases. This document is not blank in the creditor's name—it has no creditor and no blank, and does not contain a promise to anyone. Even if it had, having been produced in judgment and founded on in this action, it is doubtful whether it could be amended by filling in the address. The address will not make what was not an obligatory right into a good document of debt. I concur therefore in the view that the action, so far as laid upon this writing, cannot be sustained.

It may be a question, whether the summons is relevant, should the reference in the conclusions of the summons to the document be withdrawn? I quite concur in the view that the summons may be sustained. We must accordingly find that this is not an obligatory document, and that the pursuer can only prove the alleged debt by the writ or oath of the defender. But it is a question, what effect may be given to the defender's statements on record, because she there admits that a sum of money was received, and hardly denies that it was £100. In her second statement she says that she received a sum of money, and does not deny that it was £100. As she received this from Dr Duncan on an indefinite footing, there may be a question how far she is entitled to have her statements on record taken together.

LORD COWAN was absent when the case was argued, and gave no opinion.

The Court pronounced this interlocutor:—"Recall the Lord Ordinary's interlocutor reclaimed against, and find that the debt sued for can be proved only by the writ or oath of the defender, reserving questions of expenses."

Agent for Pursuer—D. T. Lees, S.S.C.
Agent for Defenders—Thomas Spalding, W.S.

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*Wednesday 24th, and Thursday 25th July.*

## FIRST DIVISION.

### JURY TRIAL.

(Presiding Judge—Lord President.)

### FERUS *v.* THE NORTH BRITISH RAILWAY COMPANY.

### M'CORMICK *v.* THE NORTH BRITISH RAILWAY COMPANY.

*Reparation—Negligence*—Culpa—Onus probandi.

Action of damages for injury caused by a collision between two of the defenders' trains. Direction that the pursuers were bound to prove to the satisfaction of the Jury that the collision was occasioned through the fault of the defenders. Circumstances in which, the Jury being of opinion that the pursuers had failed to discharge this *onus probandi*, verdict was given for the defenders.

These were two actions of damages at the instance of the pursuers against the defenders for injuries said to have been received by them in a collision on the North British Railway, near Sunnyside (Coatbridge) Station, on 28th December 1871. The statement of facts as to the cause of the collision was the same in both cases, and they were, at suggestion of the Lord President, tried together.

The admitted facts were, that a collision took place between the train in which the pursuers were passengers, and some waggons of a goods train proceeding in opposite direction on another line of rails. The passenger train was going from Glasgow to Airdrie, and the goods train from Airdrie

to Glasgow. The line on which the goods train was travelling was on a falling gradient of 1 in 83 from Kipps to the point where it crosses under the Caledonian Railway. The line is level for a few yards under the Caledonian Railway, and then there is a rising gradient of 1 in 105. While on the falling gradient, and quite near to the level, the engine-driver noticed from the additional weight he was drawing that something was wrong with his train, and looking back he saw a waggon or two near the centre of the train off the rails. At the same moment a passenger train was coming from Glasgow on the other line of rails, and, before anything could be done to stop it, it came into collision with the above-mentioned waggons of the goods train. The shock of the collision was slight, and the damage done to plant trifling.

The leaving of the rails by the goods waggons no doubt was the cause of the collision, and pursuers' averment of the cause of their so leaving the rails was, that "by the gross and culpable negligence of the defenders, or of the guard or other servant or servants for whom they are responsible, a waggon or waggons were allowed to be attached to the said luggage or mineral train which were not inspected before being so attached, and were not properly or securely attached, and were not railworthy. The axles and springs of the said waggon or waggons were in a faulty and dangerous state. The said luggage or mineral train was thus allowed by the defenders to proceed in an unsafe condition, in consequence of which one or more of the waggons belonging to said luggage or mineral train broke off from their own train and line of railway and went on or near the line on which the said passenger train from Glasgow to Airdrie was running. The engine of the passenger train consequently struck the said waggon or waggons, and was thrown off the rails, dragging the whole train after it, the footboards on one side being completely stripped from all the carriages. The engine was only brought to a stop by coming in contact with a strong wall at the bridge within a short distance of where the accident took place, the piston being twisted and broken by the collision. There is a very quick curve at or near the spot where the occurrence took place, and one or both of said trains were being driven at the time at an excessive rate of speed."

The pursuers, in opening their case to the jury, farther alleged that a waggon belonging to the Glasgow Police Board, which formed part of the goods train, was lower than the defenders' waggon immediately behind it (and which was the first waggon to leave the rails), and that, owing to the rear portion of the train being heavier than the front, the defenders' waggon was pressed forward and caused to jump on to the buffer of the police waggon, or, in other words, to become what is known as buffer locked, so that when the engine put on more steam when coming near the change of gradient, the defenders' waggon was jerked off the rails. In support of this theory, the pursuers further alleged that the buffers of the two waggons did not properly correspond to one another, the higher buffer only touching the lower to the extent of an inch and a-half.

The defenders denied that the collision arose from any of the causes alleged by the pursuers; that the waggons were examined previous to being placed in the train by the defenders' inspectors in the usual method adopted by railway companies, by tapping the wheels and making a close inspection of the springs, drawbars, and coupling chains; and that this method was found effectual and satisfactory in detecting defects in waggons.

They further averred, that at the time of the collision both trains were running at a very reduced rate of speed, and the shock of the collision was very slight, and that their officials made an inspection of the *locus* immediately after the accident, and they could find no cause to which they could attribute it. The waggon wheels, springs, drawbars, and coupling chains were all found in good order. The railway itself where the accident took place was in first-rate order, having been only opened for traffic in 1870. The line of rails upon which the goods train was running was also found after the accident to be uninjured, so that the defenders were unable to trace the cause of the accident, which arose solely from causes beyond their control.

In answer to the pursuers' statement, made at the opening of their case, that the buffers of the two waggons only touched one another to the extent of an inch and a half, the defenders explained that they touched to the extent of 6 inches in the event of one end of the police waggon being opposite the defenders' waggon, and 4¾ inches in the event of the other end being opposite.

Ferus claimed as compensation £800, and M'Cormick £600.

The issue sent to the jury was the same in both cases, and will be found quoted in the Lord President's charge.

The evidence for pursuers and defenders was concluded on the first day; and on the second, after Mr Scott had addressed the jury on behalf of both pursuers, and the Solicitor-General (Clark), on behalf of the defenders—

The Lord President charged the jury as follows:—Gentlemen of the jury, this case belongs to a class of not very infrequent occurrence now-a-days, and though it may seem at first sight to be a case of not very great importance, I am bound to say that I think it is a case requiring your very minute attention, because there are some of the inferences from the evidence which have been drawn upon both sides of the bar which may be justifiable and may be sustained by you, but which, if they are to be sustained, must certainly be so after a very minute examination of the evidence. I shall do my best to aid you in performing that duty, and I trust to be able to do so within a very short space. I shall, in the first place, read the issue, in order that we may see exactly to what points the controversy has been narrowed. It is —"Whether, on or about 28th December 1871, the pursuer, while travelling as a passenger in a train run by the defenders between Glasgow and Airdrie, sustained serious bodily injuries by a collision occasioned by the fault of the defenders—to the pursuer's loss, injury, and damage?" Now, there is no doubt that both of the pursuers were travelling as passengers in a train which left Glasgow at five o'clock in the afternoon of the 28th of December last, and there is just as little doubt that a collision occurred about half-past five, as the train was approaching the Sunnyside Station. The only points, therefore, in the issue which admit of controversy are, in the first place, whether that collision was occasioned by the fault of the Railway Company? in the second place, whether the pursuers were thereby injured? and if so, then, in the third place, what is the extent of the injury that they have sustained respectively? Now, in

order to appreciate the evidence bearing upon the first of these questions, viz., the fault of the defenders, it is desirable to ascertain precisely, in the first place, what it was that occurred at the time of the collision. The collision took place near to Gartsherrie Bridge, and we have the evidence of Carswell, the resident engineer of the line within whose district this place is, who describes to us very distinctly the condition of the line in respect of ascent and descent in the neighbourhood of Gartsherrie Bridge. The line is on a level under the bridge, but towards Sunnyside it rises for a quarter of a mile in a gradient of 1 in 83. To the west of the bridge, going towards Glasgow, it rises for a quarter of a mile in a gradient of 1 in 105. Then he tells us that the waggons had come off the rails at a point about 70 or 80 yards to the east of Gartsherrie Bridge, and the point of collision of the two trains was 200 yards to the west of the bridge. It follows from this, that as the goods train was coming westward upon what is called the down line, it was coming down the descent of 1 in 83, which is to the east of Gartsherrie Bridge, and it must have been near the bottom of that descent, for the descent is a quarter of a mile, and the waggons came off the rails at a point 70 or 80 yards to the east of Gartsherrie Bridge. You know that 440 yards are a quarter of a mile; therefore that train was very near the bottom of that descent when the waggons went off the line. But the point of collision was not there. The point of collision was on the other side of the bridge, 200 yards to the west of the bridge, and by that time, therefore, the goods train was going up-hill, and the passenger train was coming down-hill. That being the locality, let us next see what happened. We have the evidence of the guard and engine-driver of each of the trains. Milligan, the passenger guard in the train in which the pursuers were travelling, tells us that the first thing that attracted his attention was the whistle of the goods train, "and when I heard that whistle I applied the brake, which affects all the carriages in my train. I was turning the brake when the collision took place. The shock was not severe. I have often experienced as severe a shock with two carriages coming together in making up a train. I was not thrown down or injured. I was not paying particular attention to fix the point where the collision occurred. There was no passenger carriage capsized either at the time of the collision or after it. I saw one young lady who was complaining, but nobody else was complaining of being hurt. There were seven passenger carriages, and I think there were passengers in every one." The driver of the passenger train says that when the collision occurred the engine and two or three carriages ran off the rails, and ran about 30 yards. He is mistaken there obviously. They must have run further than that before they could have reached Gartsherrie Bridge. But that is not of very much consequence. "Then it stopped of its own accord, by coming in contact with a dyke sideways, just in below the bridge. We were very near stopped before we came in contact with that dyke. I was detained till five, and then I took the injured carriages and engine to Kipps. There is a descent from Glasgow towards the bridge. I was about the middle of the descent when the collision took place. I had no steam on. The train was just going by its own weight, and going about 15 miles an hour. The first thing that attracted my notice was the whistle of the goods train, and a collision took place immediately afterwards. None of the couplings of the train were broken, and no carriage was upset. The shock was not severe, but it was rough going over the sleepers. It was one corner of the engine that grazed the dyke. I was not injured in any way, nor thrown down. I got off to see what had happened. I cried out to see if any one was hurt, and some people called out, 'No, not that they were aware of.'" That is the evidence of the guard and the driver of the one train; and I now turn to the evidence of the guard and driver of the goods train. The guard says:—"I had the drag on hard all the way down. It acts on the wheels of the van, which is the last carriage. The collision seemed slight. Our train was going when it occurred. I inquired in a loud voice whether anybody was hurt, and the answer was 'No.'" Then John Haston, the driver of the goods train, says:—"The first thing that occurred to me was that I felt the train heavy for the load, as we were near the bottom of the incline. The passenger train was just coming from Glasgow, and I whistled. I had not time to back the engine before the collision took place. We would be going 8 miles an hour coming down the incline. We were gently steaming. I had not felt any jerk or anything unusual till I began to feel the train heavy for its load." The driver also says that when he felt the train heavy for its load, "I looked back, and I saw like a dark shade in the six-feet space." That is the space between the two lines of rails, and that is just where the waggons were running along when it got off the line. Now, this is what occurred, and the question comes to be, how it is to be accounted for? The five waggons had certainly gone off the rails just about the place where these witnesses mentioned, and which is ascertained, by an examination of the place, to have been 70 or 80 yards east of the bridge—that is to say, 70 or 80 yards from the foot of the incline that the goods train was coming down; and before anything could be done, or any means taken to put this right, the possenger train was up upon the opposite line of rails, but some of these stray waggons had got so far over the space between the rails that the passenger train came in contact with it, and the waggons had the effect of knocking off the footboards from the passenger carriages, and otherwise injuring them. The collision apparently was a slight one—indeed, that must be very obvious to you from the very small amount of injury that was done to anybody—the only two persons who are alleged to be hurt at all being the two pursuers who are now claiming damages, and all the rest of the passengers having made no complaint whatever. Further, it is certainly to be kept in view that neither the guard, nor the engine-driver, nor the stoker who was with him (for, of course, there must have been one in the passenger train), was in the slightest degree injured or knocked over, and so also in the case of the guard and driver of the goods train. They both tell you in like manner that they were not in any way affected by the collision. They say there was a slight shock, but they were not knocked off their feet, or in any way seriously affected by it. And another witness, one of the passengers, Mr Shank, a sawmiller at Airdrie, who was examined for the defenders, says he was a passenger in a first-class carriage about the centre of the train. He heard the engine whistling: "Then I felt a shock, not severe; it did me no harm, and there

were three other gentlemen in the carriage with me, but none of them were injured. I got out, and went up the line, and saw the whole of the passengers, and could find nobody that was injured." So that, whether the pursuers were injured or not, it is abundantly clear, at least, that the collision was a very slight one, and the shock a very slight one. Now, gentlemen, there are two ways of dealing with this matter. The pursuer says that he has proved how this came about, and the defender says—"It is not proved, nor is it capable of proof; for, after all the investigation that we have been able to bestow upon the matter, we cannot find out the cause of the accident. Now, gentlemen, as to the law of the matter, it is very clear. It lies upon the pursuer to prove that this collision took place through the fault of the defenders; and if the pursuer does not prove that he cannot recover damages. It was very well explained to you yesterday, by Mr Asher, that the obligations of a railway company, in conveying passengers, are quite different from those that belong to them as carriers of goods; and the reason of the distinction, in point of law, is this—When goods are handed over to a carrier for conveyance from one place to another, the goods are entirely in the power of the carrier; nobody else sees what is done with them, or can know what is done with them; and therefore, according to the custom of mercantile countries, and the law thence arising, the carrier is made answerable for the safe delivery of the goods at the point of destination; and, if he does not so safely deliver them, he is liable, without any inquiry at all as to the cause of their destruction. But in the case of passengers it is quite different. To a certain extent passengers can take care of themselves, and, at all events, they are intelligent beings present upon the scene of any accident that occurs, and capable of giving an account of what occurred. And therefore they are not entitled, according to the legal rule, to recover damages for any injury done to them in the course of their journey, unless they can prove that it has occurred through the fault of the carrier who is carrying them—be he a railway company or be he a coach proprietor, it matters not. The law is not peculiar to the case of railways, for the same law prevailed in old days before railways were known; for a coach proprietor was answerable if an accident occurred from his using horses of a vicious temper, or from his having a careless driver, or an ill-constructed coach; but he was not liable for a mere accident that could not have been foreseen or prevented. Now, that being the state of the law, it is only necessary to add further, that in some cases to which Mr Scott referred, the railway company will easily be presumed to be in fault without the necessity of much evidence. Thus, for example, if two trains meet each other on the same line of rails, it is impossible that that could have happened without the fault of the company—that is to say, without the fault of some people in their employment, for whom they are answerable; because nothing can justify the running of two trains upon the same line of rails in opposite directions at the same time; and therefore very little evidence would be necessary there to prove the fault of the company. But when trains are running upon opposite lines, as here, and the accident occurs through some of the waggons upon the one line getting suddenly off that line and coming in contact with the train running upon the other line, it must be obvious to you that that may have occurred either through unaccountable accident, or through the fault of the company, and that is just the kind of case that you are trying now, and in which, as I told you before, it lies upon the pursuer of the issue, who is claiming damages, to prove that the accident occurred through the fault of the railway company. Now, the fault is said to be this, that two of the waggons in the goods train stood in such a relation to one another in respect of height that their buffers did not properly correspond to one another, and that the consequence of that most probably was, that the buffer of the one got above the buffer of the other, the effect of which, nobody doubts, would be to throw off the rails the waggon that was hindmost of the two. The waggon that was the hindmost was one of the North British Company's own waggons, which is said to be of a certain height, and the waggon that was in front was one of the Glasgow Police Commissioners' waggons, which is ascertained to be of a less height. I need not trouble you with the details of the calculation, for I think we have quite come to this, that if one end of the Police waggon was next to this North British waggon, then the buffer of the one would come opposite to the buffer of the other to the extent of a space of 6 inches; in the other case the space would be $4\frac{3}{4}$ inches. Now, gentlemen, the witnesses of skill who were examined for the defenders say that was sufficient, but it would have been better if it had been more. You can quite appreciate the sort of opinion that is expressed in these words. Everybody feels that though it may be sufficient, it is narrow. And therefore that is a point in favour of the pursuers' case. But then, on the other hand, the witnesses seem to be all pretty well agreed—both pursuers' and defenders' witnesses—that without something more than that, that is not sufficient to account for the accident. In short, with that amount of correspondence between the buffer of the one waggon and the other, there would be no danger unless some thing else were added, and that something must be a sudden stop or a jerk. There was a witness examined for the pursuers, who struck me as being a very intelligent witness. He was not present, and saw nothing of this particular accident; but he was called as a witness of skill for the pursuers. I refer to Mr Paterson, the superintendent of locomotives of the Caledonian Railway Company; and he says, after describing the way in which the buffer of the one waggon would correspond to the other, and the extent of space that they would meet each other—"In case of a sudden stop, the higher waggon behind the lower one is apt to overlap the other. If the train were going round a curve, the higher waggon would have a tendency to go off the rails. Without a sudden stop or jerk, the one waggon would not readily overlap the other. If the engine is steaming and the brake hard on in the end van, the thing would not happen, for in that case the waggons would be kept separate as far as the couplings would stretch. There is 12 to 14 inches or more between the buffers when the couplings are on the stretch. The loaded waggons behind would not press on the empty waggons in front going down the incline if the brake was properly attended to. If the brake was not properly attended to, the heavy waggons would follow up harder than the empty ones," and so be likely to produce the result which he had before spoken of. Now, according to that evidence, everything really depends upon the question of fact, whether, in this goods train, when it was coming down the incline, and at the point where these

waggons went off the line, the engine was steaming—that is to say, was actively drawing the train after it—not merely going down with a momentum, but actively drawing the train, and the brake in the last carriage was hard on—that is to say, resisting the dragging of the engine, and so acting as a drag upon the whole train behind the engine. If that were so, the couplings of the waggons being stretched to the full extent, the buffers could not come in contact with one another, as this witness says, and as one sees must be the case. But then, on the other hand, Mr Crichton, another witness called for the pursuers, and who is inspector of permanent way on the North British Railway at Coatbridge, says this, after identifying the two waggons in question:—"18,575 (that is what we call the North British waggon) was the one that left the line first. The cause of the accident, I thought, was that the waggons had become buffer-locked—that is, that the buffer of the waggon that first left the rails (18,575) overrode the buffer of the other waggon in front, which would have the effect of throwing the waggon 18,575 off the rail. It was part of my duty to examine and report upon the accident, and to give my opinion as to the cause of it. I did not see anything to suggest that the one waggon had overridden the other. There was a curve in a falling gradient where the trucks left the line. That made it more probable that the trucks had left the line in consequence of getting buffer-locked." And, in connection with that, there are two other witnesses connected with the Police Board—one of them, Duncan Livingstone, who says that he noticed that the buffer-hook of one of the buffers of the waggon 161 was crushed up on the top, but when it was done I cannot tell. I saw nothing particular about the wood of the buffers. Robert Risk, who is a waggon repairer in the same employment, says that that waggon came to be repaired, and he put four new bearing springs upon it, which made the waggon higher. "I noticed that the top of the edge of one of the buffers was curved like as if another waggon had been on the top of it." Now, that is evidence corroborative of the suggestion or conjecture of Mr Crichton. You will consider what weight is due to it, and what weight is due to the evidence which goes to establish the fact that at the time when these waggons went off the rail the engine at the one end of the train was steaming and dragging the carriages after it, and the guard's van at the other end had the brake hard on, and was so resisting and, as it were, dragging in the opposite direction. The evidence of that fact depends entirely, I think, upon the witness Crawford, who was the guard of the goods train, and who positively asserts that he had his brake hard on during the whole time that they were coming down that quarter of a mile descent. Now, that man is a witness for the pursuer, you will observe, and that is not to be overlooked in judging of the weight of his testimony; because, when the pursuer puts a witness of that kind into the box, he necessarily accredits him and desires you to believe what he says; and he is perfectly positive upon that matter. While, therefore, you have the suggestion of Crichton on the one hand, with the corroboration of Livingstone and Risk, you have on the other the statements of the pursuers' witness Crawford as to the brake being hard on; and the inference deduced from that, established by evidence of skill, but really obvious to one's own mind, is, that if the brake was hard on, and the engine was steaming in front, the buffers of the waggons could not come in contact with one another unless there had been some sudden stop or jerk; and that there was not that you have the additional evidence of the driver of the goods train. Now, gentlemen, that seems to me to be the substance of the case as regards the main question, whether this collision took place through the fault of the Railway Company, and you must make up your minds upon that question before you proceed further. If you are satisfied that it did not occur through the fault of the Railway Company, you will at once find a verdict for the defenders. There can be no liability in that case. On the other hand, if you shall be of opinion that it was through the fault of the defenders that this collision occurred, or, in other words, that the collision occurred by the one waggon overriding the other, and so being driven off the rails, then you will proceed to consider whether and to what extent the pursuers were injured. But just let me warn you on this point, that you must not allow yourselves to come to any general and vague conclusion that upon the whole matter probably the Railway Company were in fault. You must be satisfied how it was that they were in fault. You will see at once that you will not be doing justice to them unless you face the question in that light—how it was, and by what means, that their fault produced this collision. If you are satisfied that they were in fault, and that their fault produced the collision, then you will consider whether the pursuers were injured, and to what extent. Now, upon this part of the case I have very little to suggest to you. You have heard all that has been said upon both sides as to the nature and extent of the injuries alleged by the pursuers. In any view, they must be considered as very slight I should apprehend, and whatever conclusion you may come to on that subject I have no doubt will be sound enough, and upon that you require really no assistance from me at all. I have thought it right to bring the evidence on the main question very carefully before you, because it seems to me to be a narrow case in that respect, and one very much fitted for a jury to deal with; and I am sure that whatever you do in the matter will be according to justice.

The jury retired at twenty-five minutes to one o'clock, and after an absence of a quarter of an hour returned and intimated that they had agreed by a majority of 10 to 2 that the pursuers had failed to prove fault on the part of the defenders, for whom, therefore, they intimated their verdict.

The LORD PRESIDENT then informed them that he could not receive the verdict unless they were unanimous until the lapse of three hours.

The jury then again retired, and after a further absence of ten minutes, returned a unanimous verdict for the defenders.

Counsel for Pursuers—Scott and Rhind. Agent—W. S. Stewart, S.S.C.

Counsel for Defenders—Solicitor-General and Asher. Agents—Hill, Reid, & Drummond, W.S., and Mr Adam Johnstone.