[*3d August* 1840.]

(No. 13.) ALEXANDER DONALDSON, Writer in Haddington, Appellant.[1]

[*Sir W. Follett.*]

Misses JANE and ISABELLA HALDANE, Respondents.

[*Attorney General (Campbell).*]

Agent and Client — Reparation — Proof. — A law agent acting in the double capacity of agent for borrower and lender took an assignation to a lease as the lender's security, but without intimation to the landlord, or taking possession under the assignation. A feu right to the subjects was thereafter acquired by the borrower, who thereupon granted securities to a large amount over the property. A postponed security was thereafter taken for the original lender, on the supposition that the security under the lease had been evacuated by the feu right. The agent was in the knowledge of the extent of the prior burdens, but refrained from communicating it to the lender; the subjects afterwards fell very much in value, and proved insufficient for the prior burdens. It was alleged, on the part of the agent, that, from recent valuations of the property, he had good reason to believe it was worth 12,000*l.* or 13,000*l.* more than the amount of the prior burdens at the date of the loan.—Held (affirming the judgment of the Court of Session) that the agent was liable for the sum so lent.

1st DIVISION.

Lord Ordinary Corehouse.

IN the year 1815 Mr. Archibald Dunlop obtained a lease from the magistrates of Haddington, of the ground

[1] 13 S., D., B., & M., 610.

on which a very extensive distillery and dwelling-house are now built, for the space of twice ninety-nine years, from Martinmas 1815, for payment of an annual tack-duty of 50*l.* 10*s.* In March 1818 Mr. Dunlop borrowed 2,000*l.* from Mr. William Cunningham, for which he granted his bond, and he assigned the lease in security thereof. The assignation was intimated to the magistrates on 24th June 1818. Cunningham never entered into possession of the subjects of the lease as assignee. In 1823 Cunningham called up his money, and Mr. Henry Haldane, then residing in Haddington, being desirous of investing a sum of 2,000*l.* on heritable security, agreed with the appellant, who was the agent of Dunlop, to lend that sum on obtaining an assignation to the security of Cunningham. The following are extracts from letters written by the appellant to Dunlop relating to the transaction:—

"My dear Sir, 5th Nov. 1823.

"I am happy to say I have an assurance from Mr. H. "that he will be ready with the 2,000*l.*, and at four "per cent., upon the conditions you mention. You "should immediately send for the bond, that an assig-"nation may be prepared without loss of time. He "would have no objection to give another 1,000*l.*, but "this would cause additional expense, and might be no "object to you at present."

"My dear Sir, 10th Nov. 1823.

"When will the 2,000*l.* be wanted? I think I shall "get it from Mr. H. Haldane, at least he told me some "weeks ago that he had the needful, and wished a "good security. As it is just the sum you have to "pay, it may be got on an assignation to the former "bond."

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An assignation was thereafter prepared by the appellant in favour of Mr. Haldane, but it was not intimated to the granters of the lease, and no steps were taken to put the assignee into actual possession, or otherwise to complete the security.

In 1826 Dunlop acquired a feu right to the subjects of this lease, and in July or August of the same year he obtained a loan of 15,000*l.* from the British Linen Company, and granted a heritable security over those subjects for the same. Before obtaining the loan of 15,000*l.* from the bank, a report and estimate by two valuators had been obtained, which stated the probable cost of the distillery to have been 40,000*l.*, and its probable value to be 30,000*l.* or 32,000*l.*

Mr. Haldane died about the end of the year 1826, and, by an arrangement between all the parties concerned, the bond for 2,000*l.* and the security for the same sum were conveyed to the respondents, who consulted the appellant as their agent on the subject. In the correspondence which then occurred the appellant wrote to the brother of the respondents:—"October "1827.—I mentioned (to the late Henry Haldane) that "in my opinion he no longer held any security beyond "Mr. Dunlop's personal obligation, and that Mr. D. "would pay him up the money at the ensuing Martin-"mas if he wished it; but he said that he was quite "satisfied with Mr. D.'s own security. Under the "circumstances now stated, I do not think this can be "viewed in any other light than a personal bond." A memorial was also prepared at this time by the appellant for the respondents, intended to be laid before counsel, containing this statement:—"A principal object "with Mr. Dunlop in this transaction was, to enable

" him to borrow a considerable sum on a better security
" than he could previously give, and with this to pay off
" some debts secured in the same manner as Mr. Hal-
" dane's. This he accomplished, and he intimated to
" all who held securities that he would discharge these
" at the ensuing term of Martinmas. I was autho-
" rized to intimate to Mr. Haldane that Mr. Dunlop
" would pay him at that term, or to tell him that
" Mr. Dunlop would keep the money, if this was more
" convenient for him, and he was quite satisfied with
" his personal security. I think it was going to a
" funeral (some time, perhaps, in August or September
" 1826) that I made this communication to Mr. Hal-
" dane. I explained to him the change in Mr. Dun-
" lop's situation, and told him that I no longer thought
" he had any security over the distillery. I do not
" distinctly recollect his answer, but it was to this
" effect: 'that as he had no occasion for the money,
" 'and was quite satisfied with Mr. Dunlop's own
" 'security, he would rather wish him to keep it.'"

On the 3d November 1827, the appellant wrote thus to Dunlop, " The Miss Haldanes, who are now in right " of your bond to Mr. Cunningham, are quite satisfied " to have you for their debtor; but it occurs to them, " if the money is to be in your hands, that they should " have the same kind of security as he got. That " you may have time to determine whether you will " do this or pay up the money they will wait your " answer till the 1st of January." On 4th February 1828, Dunlop granted a disposition of the distillery, &c. in security, and thereupon infeftment in favour of the respondents was expede. The respondents then re-

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nounced their right to the lease, which was in consequence cancelled. In 1831 Dunlop became bankrupt, and it appeared that in October 1826 he had granted further heritable security over the distillery, making a burden of 18,500*l.* The appellant was the notary who expede the infeftments in favour of the creditors in these prior burdens.

When Dunlop's estate was sequestrated, the general creditors paid the interest of the heritable debts for one year, after which, finding that the subjects would not satisfy these debts, they abandoned them to the heritable creditors. A ranking and sale was then brought, in which a witness, in 1834, deposed, that he estimated the value of the distillery at 10,000*l.*; that he had valued it about the end of 1831 by Dunlop's desire, and he then estimated it at 13,800*l.*, but that in 1825, when the distillers trade was flourishing, he would have considered it worth 25,000*l.*

The respondents, on the 10th December 1833, raised an action against the appellant, concluding for the payment of the 2,000*l.* and interest, upon the respondents granting to the appellant an assignation to the bond and disposition in security and their whole right under the same.

The Lord Ordinary (12th November 1835) pronounced the following interlocutor: "Decerns in terms "of the libel, finds the defender liable in expenses of "process, and remits to the auditor to tax the account "thereof, when lodged, and to report."[1]

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[1] "*Note.*—In the circumstances of this case, there is no reason to "suppose that the defender intentionally sacrificed the interest of the "pursuers or their brother, Mr. Henry Haldane, to that of his client,

The defender reclaimed.

On the 3d of March 1836 the Lords of the First Division adhered to the above interlocutor.

The defender appealed.

" Mr. Dunlop; but it is thought that he is bound notwithstanding to " indemnify them for the loss they have sustained in consequence of " negligence and error in his professional conduct. It is plain that in " negotiating the loan by Mr. Haldane, he acted in the double capacity " of agent both for the borrower and lender; a delicate situation, in " which more than ordinary care and circumspection are necessary. On " that occasion he neglected to complete the security in the way in which " it ought to have been done. He neither intimated to the granters of " the lease the assignation by Cunningham to Haldane, not did he put " the assignee either into actual or constructive possession. The first " omission exposed Haldane to the danger of Cunningham's bankruptcy, " and the second to that of Dunlop's bankruptcy. The first omission " was quite inexcusable, the second was neither justified, as is alleged, by " the terms of the assignation, nor by the decision in the case of Yeoman, " in 1813.

" Mr. Dunlop having obtained a feu right of the subject of his lease, " but under the burden of that lease which had been conveyed to Henry " Haldane, the defender erroneously informed Haldane that his security " was thereby evacuated. He says that Haldane on that occasion ex- " pressed his intention to let the money remain on Dunlop's personal " security, an averment of which there is no evidence, and which, if proved, " would not now be material. After Henry Haldane's death, the pur- " suers, by a compromise with their eldest brother, obtained right to the " bond and assignation from Dunlop. Whatever may have been the " intention of Henry Haldane, it is clear that the pursuers desired to " have an effectual heritable security from Mr. Dunlop, and that the " defender acted for their behoof in attempting to obtain it, though again " in the double capacity of agent for borrower and lender. The de- " fender avers that he informed the pursuers that the security created by " the assignation of the lease was evacuated by the feu right, and it " appears from his letter of the 3d November 1827, that he applied to " Mr. Dunlop for a new security to them ' of the same kind which their " ' brother got;' which can be construed in no other sense than a first " security over the subjects. Accordingly, he did obtain a heritable " bond from Mr. Dunlop, on which he expede an infeftment. But on " that occasion, though perfectly aware, as he admits, that the property " had in the meantime been encumbered to the amount of nearly 20,000*l.*, " which rendered it a security altogether unfit for a permanent invest- " ment, and which no prudent man of business acting for the pursuers

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Appellant's Argument.

Appellant.—The loss said to have been sustained by the respondents has not arisen from any omission or mismanagement on the part of the appellant, in framing the title by which Mr. Henry Haldane acquired right to the debt and security in question.

The principal subject of the assignation by Cunningham to Haldane was the debt of 2,000*l.* itself; and that assignation having been most effectually intimated to the debtor, Dunlop, — who in truth negotiated the whole transaction, and who received the assignee as his debtor, and continued to pay him the interest,—the assignation to the debt was thereby completed. Cunningham was completely divested of the character of creditor in the bond; and that character was effectually transferred to

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" would have accepted, he concealed that fact from them, and exposed " them to the loss which has since occurred.

" No sufficient excuse has been stated for this conduct on the part of " the defender. He says the pursuers relinquished their security under " the lease without his knowledge or consent; but they are not to blame " on that account, as he himself had informed them that that security " was destroyed; information singularly unfortunate, for even at that " moment, it rather appears, he might have repaired his original neglect, " and rendered it available. Another defence is, that he did give them " information that Mr. Dunlop had granted securities over his feu; " because, in his memoir to Mr. John Haldane, he had stated that the " feu right was obtained to enable Mr. Dunlop to borrow money, and to " pay off certain debts. But this communication, even if shown to the " pursuers, which they deny, and which is not proved, was much too " vague and imperfect to put them on their guard, for it neither specified " the sums borrowed by Mr. Dunlop, nor the nature of the securities he " had granted. Still less is it relevant to plead that the pursuers did not " employ him to select a security, but restricted him to take one from " Mr. Dunlop. Even if that had been the case, it was his duty to " have explained to them distinctly that Mr. Dunlop had no longer the " power to give them an effectual security, having borrowed on the dis- " tillery to the great amount above mentioned. It is plain that the " defender, misled by the apparent prosperity of the distillery—at best a " hazardous speculation, and by the supposed resources of Mr. Dunlop, " had considered the real security as of little moment, and become in- " cautious and negligent with regard to it."

Haldane, insomuch that even if the former had become bankrupt his creditors could not have claimed that debt as part of his effects. And since they could not have claimed the debt itself, which was the principal subject, of course they could not have claimed the right of lease, which was a mere accessary and inseparable from the debt in security of which only it had been assigned.

Appellant's Argument.

It is said that the appellant failed to put Haldane into either actual or constructive possession; but to this accusation it is sufficient to state that the transfer was completed, insomuch that Haldane was placed in precisely the same predicament in which his author Cunningham had stood.[1] The assignation of Dunlop's lease in security of this debt of 2,000*l.* had been intimated to the landlords in the most formal manner; and the debt had thereby, as the law then stood, been rendered a real burden upon his right of lease, insomuch that had Mr. Dunlop's bankruptcy occurred at that time, the assignee, or those deriving right from him, would have been secure.

When an agent is acting in a matter where there is difficulty in point of law, he is safe if he follow what was the ordinary practice at the time.[2]

The proposal of the respondents to allow their money to remain in the hands of their debtor Dunlop, on his

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[1] Wallace v. Campbell, 16th Nov. 1750, Morr. 2805 and 15280; Elchies, voce Tack, No. 17; Yeoman v. Elliot, 2d Feb. 1813, Fac. Coll.; Bell on Leases, 351, 353. 3d ed.

[2] Grant v. M'Leay, 1st Jan. 1791, Bell's Cases, p. 319; M'Lean v. Grant, 15th Nov. 1805; Graham v. Alison, 3d Dec. 1830, 9 S., D., & B. 130; Hunter, on Landlord and Tenant, p. 407; Morrison, App. voce Reparation, No. 1.

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granting a new heritable security to them over these subjects, came from themselves, without their consulting the appellant. The appellant was not their ordinary agent, nor did they ever ask his advice as to the propriety of leaving their money in Dunlop's hands, or of demanding farther security. He has all along expressly denied that allegation, and challenged the respondents to prove it; but they have failed to produce any evidence whatever in support of it. There is no evidence that the appellant was acting as the agent of the respondents; on the contrary, the appellant was applied to by the respondents as the agent of Dunlop, and accordingly all the charges in the appellant's books regarding this transaction are entered by him exclusively to the debit of his own client, Dunlop.

Appellant's Argument.

It has been shown that at the date of the transaction the subjects were of sufficient value to afford an ample security for this debt as well as for the prior debts. A law agent is not responsible for depreciation in the value of the subject of a security, if there is proper evidence, upon which he was entitled to rely, that at the date of the transaction the value was sufficient.

Respondents Argument.

Respondents.—The only question truly at issue between the parties is the legal question of liability; and upon this question the respondents contends that the grounds of judgment set forth in the note of the Lord Ordinary, and confirmed by the Court, cannot be impugned.

In the first place, the Lord Ordinary has legally found that in the transaction in question the appellant must be regarded and dealt with as having acted in the capacity of professional agent, first for the deceased,

Haldane, and afterwards for the respondents, although to what extent he so acted, or what were the duties which in this capacity he was bound to perform, may be made matter of question. It is impossible successfully to maintain that the appellant acted merely as the agent of Dunlop, having no duty to perform to the other party—that there was no obligation on him to attend to their interests—no responsibility towards them which could ever raise a claim on their part against him. The bare fact that in a transaction betwixt borrower and lender no other agent was employed, constituted the appellant the agent of both the borrower and lender, to the effect of his carrying through, so far as his professional services were required, the legitimate intentions of both; and that he was paid for his services by the borrower makes no difference in the case, because it is well known that the borrower defrays all the expenses of the loan, even where separate agents act for the parties. Indeed, the mere circumstance of professional duties being gratuitous does not diminish the necessity of rightly performing what is undertaken, or the responsibility resulting from a failure to do so. That a professional person, situated like the appellant, is to be held as the agent not less for the lender than for the borrower, and lies under a corresponding liability both to the one side and to the other, has been settled by repeated decisions.[1] The sound principle is plainly that laid down by the Court of Session, in the case of Struthers against Lang, and which was sanctioned on

[1] Struthers v. Lang, 2d Feb. 1826, Fac. Coll. House of Lords, 28th May 1827, 2 W. & S. 563; Rowand v. Stevenson, 6th July 1827, 5 S. & D. 903, 6 S. & D. 272, House of Lords, 14th July 1830; 4 W. & S. 177; Brown v. Cuthill, 28th March 1828, 4 Mur. 474

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appeal:—"It was the opinion of all their Lordships, "that it was quite immaterial from whom the party "received instructions to prepare the security. In "law the employer of the conveyancer is the party "for whose behoof the deed is prepared. The very "circumstance indeed that the instructions are given "by the debtor in the bond, his ordinary employer, "imposes on him additional responsibility in relation to "the interests of parties, who thus appear to place such "implicit reliance on his exactness and attention."

Haldane desired to have a good security before he parted with the money, and the duty of the appellant plainly was to take care that before the money was paid Haldane should be put in possession of an effectual real security over the property; but that duty the appellant altogether failed to discharge. It is not disputed that no real security ever was created in Haldane's favour; he never had more than a personal righ. The fact that the appellant took no step whatever in order to give Haldane a real security over this property, but left him with nothing more than a mere personal claim against Dunlop, is by itself sufficient to fix a direct breach of duty upon the appellant.

It is altogether irrelevant to the legal question of liability to inquire what was the value of the property in question at the time the security was taken, or how far such a security might in ordinary circumstances be regarded as a prudent or imprudent investment of money. A special obligation to procure a first security must be held implied, and, whatever might be the value of the property, to acquire merely a third security constituted a breach of obligation, the consequence o. which must legally fall upon the appellant.

LORD CHANCELLOR. — My Lords, in this case two questions arose; first, whether the defender (appellant) is liable in respect of the transactions of 1823, when the money was first advanced by Henry Haldane; and secondly, whether he was liable for the transactions in 1827, when the loan was continued by his sisters the respondents.

Dunlop, the borrower, held a lease under the magistrates of Haddington, which he had assigned to Cunningham in security for 2,000*l.* In 1823 Henry Haldane was desirous of placing out 2,000*l.* That the defender acted as professional agent for Henry Haldane in that transaction is clear, from the letters of the 5th November 1823, and the 10th November, although they were addressed to Dunlop. The security was to be upon the lease, but to effect that and make it a good security, there should be a notice to the lessor and possession taken under it, and neither was done. Dunlop afterwards obtained a feu right, but under the burden of the lease. Thus, if the original transaction had been properly carried through, a good security for the loan might have been effected, notwithstanding the feu right; but the defender thought the feu right destroyed the security, and so he afterwards informed Henry Haldane.

Henry Haldane died, and the respondents, by an arrangement with their brother's heir, became entitled to this debt. It is said that they did not represent the original lender, Henry Haldane, and that they therefore cannot maintain their demand for negligence by the defender as their agent. In the view I take of this case it is not material to come to any decision upon that point.

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Ld. Chancellor's Speech.

In 1827, on the 17th of October in that year, the defender (appellant) informed the pursuers (respondents), by a letter to their brother John Haldane, that he had intimated to Henry Haldane that the security upon the lease was void, and he repeated this opinion to the pursuers (respondents); the memoir also proves the same thing. They acted upon this opinion, and if the advice was wrong, they have clearly lost their money by the mistake. At that time the security upon the lease, which was the first charge as to it, might have been made available; but the defender (appellant) thought it void, and took a new security over the feu right, which was inferior to the old, in consequence of incumbrances of a prior date having been then created over it.

It is part of the defender's (appellant's) case that in 1827 Dunlop was solvent, and that the money might then have been recovered. The defender's (appellant's) note of the 3d of November 1827 explains why it was not; for he tells Dunlop that the Miss Haldanes were satisfied to have him for their debtor, but that they thought they should have the same security that Cunningham had got. Did he obtain such security for them? Instead of doing so, he abandoned that which was good, or might have been made so, thinking it void, and took what he ought to have known was likely to prove to be bad.

Here, then, were the Miss Haldanes with their 2,000*l.*, which they were willing to lend, or continue at interest, provided they could get a good security. It was continued, by the intervention of the defender (appellant), upon security good in form, but in reality inadequate and unproductive in the result, the property

being a distillery of the most uncertain and fluctuating value, depending upon the prosperity of the owner, sure to fall in value in case of his distress, and subject at the same time to prior debts to a very large amount, which in the result proved to be much more than the whole value.

To a claim for the loss arising out of such a transaction, the only defence that could possibly be available would be the denial of agency. But there is clear proof that the defender (appellant) acted as agent in respect of the loan for Henry Haldane, although he did not charge for such agency, the borrower being the person to pay. That he acted also for the pursuers (respondents) is, I think, sufficiently proved by his letters of the 17th of October 1827, the 23d October 1827, and the memoir and the letter of the 3d of November 1827. He does not dispute that he acted in preparing the instrument for the supposed security, and that he would have been liable to them if he had committed any error in such instrument creating an injury to them. That appears in his revised case (p. 15.), but what right has he so to limit his responsibility? He also admits in his statement of facts (p. 8.) that the respondents were his employers.

But it is said there was no want of diligence in leaving the money upon that security, because, first, the pursuers (respondents) knew well the existence of the prior charges; and, secondly, because the value of the property was then sufficient. The first proposition, if proved, would lead to no conclusion, because the consideration of the prior charges must be brought to the knowledge of the clients by their professional adviser, both as to their legal effect, and with reference to the

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value of the property. There is no evidence of value later than 1826, which appears to have been made on behalf of the owner; no means appear to have been taken to ascertain the value of the property, independently of the prosperity of the owner, which could alone render the loan secure. On the whole, it appears to me that for want of sufficient care on the part of the defender (appellant) the loss has arisen, and I therefore move your Lordships that the interlocutor be affirmed.

Ld. Brougham's Speech.

Lord Brougham. — My Lords, I entirely agree with my noble and learned friend in the view which he has taken of this case. It is impossible to get over those letters from which the appellant appears to have been acting for the Miss Haldanes after their brother's death. It certainly occurred to me, on looking minutely into the case some time ago, that the appellant had not been paid — that he had made no charge — that he had been a kind of volunteer in his conduct as a professional man. Indeed he appears to have been all along regarded as a volunteer on their part, and being the agent in this loan transaction for both the borrower and the lender, I think there is every reason to believe that he received no remuneration. The liability he has incurred in point of law becomes in consequence more hard upon him; that cannot be denied; but that he is liable there cannot be any doubt. The letter of the 3d of November, to which my noble and learned friend referred, seems to make it quite decisive that he was acting on their behalf; for in this (a letter from Mr. Donaldson to Mr. Dunlop) he says, "the Miss "Haldanes, who are now in right of your bond to

" Cunningham, are quite satisfied to have you for their " debtor; but it occurs to them, if the money is to lie " in your hands, that they should have the same kind of " security as he got;" that is, that Cunningham had.

Now what security is that? Not only a real security, which was the security that ought to have been offered to them,—which was by a great omission not offered,—but a first security. Instead of that, he takes any thing rather than a first security. He takes a security after incumbrances, one of 20,000*l.*, or at the very least 15,000*l.*, and the result is that the whole has been lost.

Now, in answer to the question, why did he not search the records in the usual way, and communicate the result of his search? it has been said, that there was no occasion to search, for he knew it perfectly well; and there is no doubt he did, for he had been employed by other parties. Then the question that may be asked is, why did he not tell the Miss Haldanes of these prior incumbrances? to which he answers, (and that is the only answer that it becomes material to call your Lordships attention to (in the 16th statement, p. 10 of the appeal case):)—" The pursuers, or their " brother Mr. John Haldane, their authorized manager " in this matter, as well as the defender, were in full " knowledge of the prior incumbrances, and that he " did not search, as he knew it from other sources of " information." The brother, Mr. John Haldane, may have known it, and probably he did, but the transaction was one on behalf of the Miss Haldanes, and he certainly ought to have told them. I mention this in addition to what my noble and learned friend has stated; it was much relied upon in the Court below, and a very strong feature of the case it is.

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I have before said that I think this a case of great hardship, but it has been made a case of greater hardship by the course taken below, and which has been abandoned at your Lordships bar, though not altogether in the papers; I mean attacks made upon the character of a professional gentleman. There are two ways of attacking a professional man for failing in his duty. The one is for negligence or mistake in point of law, and that mistake in point of law must be very gross; indeed such as is perfectly inexcusable. Negligence, or that gross and crass ignorance to which I have referred, is the only ground for this action. But there is also another ground, and that ground, though altogether abandoned here, is a little referred to in one of the papers, but in an alternative way, just as it is in the summons. That ground was most amply, and in my opinion most unjustifiably, insisted upon in the Court below; and as this is material, with a view to the only matter that remains, namely, the question of costs, I beg to call your Lordships attention to it. I pass over other matters in the papers, and come to p. 8. of the respondents case, containing their statement in the Court below:—"The short answer to this question is, that the "defender altogether failed to do so, through gross pro- "fessional misconduct." Now, that there might be no doubt what that kind of misconduct was, that it was not merely crass ignorance or gross negligence, it goes on to say, "He pretended that a change of form in the "security was necessary. This statement itself implied "that in every thing but the mere form the security "was to be the same," and so the argument goes on. But at the bottom of p. 14 of the case we have it clearly brought out in what way this misconduct is intended to

be charged upon this gentleman, and which we might well call gross misconduct if there was any ground for it. "The pursuers humbly think that they sufficiently "established on their own part that he undertook a "professional duty in which he culpably failed, and "therefore is bound to repair the consequences; and if "the principles on which they contend he has incurred "responsibility be sound, they humbly conceive that "there will be little difficulty in applying them on the "ground of any alleged hardship; for it appears clear "to the pursuers that the defender, after voluntarily "undertaking the delicate office of agent for two oppo-"site parties, truly did what was neither more nor less "than to sacrifice the interests of one of these parties "to those of the other; and now, when the bankruptcy "of the favoured client has brought an utter loss on "those whose safety he neglected, the pursuers con-"ceive that he has exposed himself to most just claim "of reparation."

Your Lordships observe this is not a charge merely of professional negligence, or even of great ignorance. I do not say that great ignorance is altogether made out; the appellant might form an erroneous view in point of law in a matter in which indeed he was wrong, but in which there was nothing like that gross professional ignorance to which I have adverted; but the charge made here is not a charge of that kind, but that he wilfully and corruptly, for it means nothing else, sacrificed the interest of one of two parties, for both of which parties he had assumed to act; namely, the interest of the lender to the interest of the other client, the borrower, Mr. Dunlop; and that he knowingly and wilfully gave Mr. Haldane, and afterwards the Miss

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Haldanes, who stood in his right, a security that was not worth a farthing in favour of Mr. Dunlop, his other and wealthier client, whom he favoured. A grosser charge never was brought against a professional man. I am bound to state, upon the best consideration I have been able to give, that this charge is wholly and utterly unsustained by the facts in the case; that it is groundless in every sense of the word. And the Lord Ordinary (Lord Corehouse) seems to have been of precisely the same opinion, for he begins his note, appended to his interlocutor, by saying, "There is no reason to suppose that "the defender intentionally sacrificed the interest of "the pursuers, or their brother, Mr. Henry Haldane, "to that of his client, Mr. Dunlop." Then he says, in consequence of negligence and error in his professional conduct, he has made himself liable; and he concludes by stating that which undoubtedly throughout the whole transaction has been the origin of the error into which he himself was led, and into which he led them:—"It "is plain that the defender, misled by the apparent pro-"sperity of the distillery, at best a hazardous specula-"tion, and by the supposed resources of Mr. Dunlop, "had considered the real security as of little moment, "and become incautious and negligent with regard to "it." And that is clearly the origin of this unfortunate transaction.

It is very seldom that these actions have prevailed. They are not often brought, and when they are brought it is very seldom they are successful. I have not known in my experience cases in the Scotch courts, or in the English, in which, to any thing like this amount, an action has succeeded. It is a case of pure hardship; it is upon the legal responsibility which he incurred on a

subject on which reference was made to him that the gentleman has become liable, and it is on that account and that account alone that his estate, for I understand he is dead, is answerable for the payment of these sums. When I say, my Lords, that the charge to which I have referred was abandoned here, I mean at the bar; for in the last two lines of the appeal papers there is a reference alternatively made to it.

My Lords, for these reasons, and considering that in this material respect the character of Mr. Donaldson stands clear of all imputation whatever, I entirely agree with my noble and learned friend, that nothing should be said about the costs of appeal, the consequence of which is that the costs of appeal are not given.

The House of Lords ordered and adjudged, That the said petition and appeal be and is hereby dismissed this house, and that the said interlocutors therein complained of be and the same are hereby affirmed.

RICHARDSON and CONNELL,—HOLME, FRAMPTON, and LOFTUS—Solicitors.