vey away as much water as can be conveyed by it. That is all the right they have—they have that right, and, in my opinion, nothing more. I do not, however, propose to your Lordships that we should make that a direction to the Lords of Session, but simply remit the case to them to do what to them may seem right; but I wish them to have the strongest intimation that I can give, that that is the only construction to be put upon this feu contract.

That disposes of the original appeal. With regard to the cross appeal I have heard nothing from the beginning of the case that at all shakes my opinion not only that it must be dismissed, (that cannot be questioned, because it is dependent upon the fact that the judicial reference was to come to an end, and the judicial reference being pending, it would be ridiculous to talk of appeals calling in question the issues which have been directed by the Court,) but, further, it must be dismissed with costs, upon two grounds. In the first place, I have heard nothing which satisfies me that this was, under any circumstances, a competent appeal; and even if it were competent after the issues had been directed, and the parties had gone down to trial, without, however, raising such a point, it seems to me far too late, if it had been a matter of discretion to allow of such an argument. My advice, therefore, to your Lordships is to reverse the interlocutor, and to remit the matter back to the Court of Session, with a direction to do therein as justice may seem to them to demand; and, upon the cross appeal, to dismiss it with costs.

LORD BROUGHAM.—My Lords, I entirely agree with my noble and learned friend upon both points—both as to the mode of proceeding and the course to be followed out. My only doubt was as to which course we should take, whether we should make it a part of the judgment, or intimate, in pronouncing the judgment, what course was to be pursued. I entirely agree that the best course is that which my noble and learned friend has advised your Lordships to adopt, viz., not to make it any part of the judgment, but to intimate it, as my noble and learned friend has done.

With respect to the other point as to the competency of the cross appeal, I have only to observe, upon the case of *Breadalbane* v. *M'Gregor*, that there is no doubt whatever that the interlocutor then under appeal was one finding the averments relevant, and fit to be the subject of a jury trial. And it was upon that ground that the appeal was held competent. But there is an expression in the judgment or in the argument of my Lord Chancellor Cottenham in coming to that conclusion, which appears to me to go a little further than we who agreed with him (Lord Campbell and myself) can be said to have gone. He says the prohibition in the act does not refer to those cases where the Court of Session, having jurisdiction over the matter, finds it necessary, for the purpose of disposing of the case, to direct an issue to be tried. That, probably from an inaccuracy in taking down his Lordship's words, appears to go a good deal further than he himself can be supposed to have gone, that in every case in which the Court of Session has jurisdiction, whensoever it chooses to direct an issue, that issue is not within the prohibitory provision at all of the act. My Lords, I cannot go the length of that, undoubtedly.

Interlocutor complained of in the original appeal reversed, and cause remitted, with directions.
Interlocutor in cross appeal affirmed, with costs.

Appellants' Agents, Duncan and Dewar, W.S.—*Respondent's Agents*, Patrick, M'Ewen, and Carment, W.S.

MARCH 16, 1855.

CHARLES BUCHANAN, *Appellant, v.* JAMES TORRIE DOUGLAS, *Respondent.*

Diligence—Mora—Cautioner—Landlord's Sequestration—Damage, Consequential—*A creditor holding a decree used a poinding of his debtor's furniture, and obtained a warrant of sale, but a sale was prevented by an interdict first by one party and then by another. Ultimately both processes of interdict were successively dismissed; but, before the creditor effected a sale, the landlord used sequestration for rent, which was preferable. The creditor then brought an action against the cautioner in the first suspension for payment of the expenses of the second suspension, and for the amount in the decree on which the poinding proceeded. In the special circumstances of the case, which were* held *to amount to* mora *on the part of the creditor in carrying out his diligence,* HELD (affirming judgment), *the action was properly dismissed.*[1]

On 4th September 1846, the appellant, under a decree for £30 19*s.* 10*d.*, obtained by him against James Gordon, poinded certain furniture in Gordon's house, the appraised value of which amounted to the sum decerned for. Warrant of sale was granted, and the sale advertised. But

[1] See previous report 15 D. 365; 25 Sc. Jur. 222. S. C. 2 Macq. Ap. 48: 27 Sc. Jur. 328.

Michael Anderson having applied for interdict against the sale, the same was granted *ad interim* on the caution of the defender.

On 22d December 1848, the Court repelled the reasons of suspension and interdict, and dismissed the application with expenses.

By this time the process of poinding had fallen asleep.

Some additional discussion took place with regard to the expenses of the suspension, and decree for modified expenses was not pronounced till 9th February 1849. They were ultimately paid.

Decree of wakening the poinding was obtained on 28th March 1849, when a second warrant of sale was obtained, and the sale a second time advertised.

A second application for interdict against the sale was made by John C. W. Gordon, a son of the original debtor.

Thereupon the pursuer raised the present action against Anderson, Douglas, and Douglas' attestor, concluding for decree against them—"either to restore immediately to the pursuer the said furniture and other effects, as the same stood at the date of the foresaid poinding, and to make payment to the pursuer of the sum of £30 sterling, or of such other sum as may be found to be the difference between the value of the said furniture and effects at the date of the poinding, and such proceeds as the same may yield when sold, with all expenses incurred or to be incurred thereanent, or to make payment to him of the sum of £100 sterling, or such other sum as may be found to be the just worth and value of the said furniture as at the date of the poinding, with interest and expenses as aforesaid, with the legal interest due upon said sum, and to become due thereon; or otherwise to make payment to the pursuer of the sum of £150 sterling, or such other sum as may be found to be the amount of the reparation and damages due to him in the premises, and as may cover and pay the pursuer the amount of his debt, interest, and whole expenses, as the same shall be condescended on and established in the course of this process."

Decree passed in absence against Anderson and the attestor.

The interdict granted at the instance of Gordon junior was subsequently recalled.

The pursuer for the third time advertised a sale, but it was stopped by a sequestration of the furniture, obtained on 10th July 1849 by the Bank of Scotland, as landlord, for the half year's rent due at Whitsunday 1849, and in security of the rent of the succeeding year.

The pursuer now pleaded, that the cautionary obligation of the defender being to restore the poinded furniture in the same position as at the date of Anderson's application for interdict, he was bound to make payment to the pursuer of the amount of his original decree against Gordon, of the expenses of the poinding up to Gordon's interdict, of the expenses of that interdict, and the expenses of the diligence at the pursuer's instance for the expenses of Anderson's interdict, and lastly, of the Sheriff-clerk's dues of the sale stopped by Gordon's interdict.

The First Division assoilzied the defender.

The pursuer appealed, maintaining that the interlocutor of the Court of Session should be reversed—"1. Because, according to the construction of the bond of caution for indemnifying the appellant against the consequences of a wrongful interruption of his diligence, the respondent when the interdict was finally adjudged to have been wrongfully used, was bound to have immediately replaced the *ipsa corpora*, as contained in the execution of poinding, or to have paid the debt, interest and expenses for which the diligence proceeded.—Bell's Prin. § 248; *M'Arthur Moir* v. *Hunter*, 11 S. 32; *Lord Elibank* v. *Renton*, 11 S. 238, 12 S. 354; Mor. 13,970-3; *M'Arthur* v. *Bruce*, 22d July 1760, F.C.: Ersk., b. 3, t. 1, § 13. 2. The attempts to shew that no damage has arisen for which the respondent is liable, and that any loss that occurred had been occasioned by the *laches* of the appellant, or that the respondent is thereby liberated from the obligation in his bond, are unfounded in fact and not relevant in law."

The respondent supported the interlocutor on the following grounds:—"1. At the date of the recall of the interdict in December 1848, and for some time thereafter, the furniture in question was in the premises where it had been poinded, in a condition sufficient to satisfy the appellant's claim, or equally available for that purpose as it was when the interdict was applied for. 2. When the appellant instituted proceedings against the respondent he was not, and is not yet, in a situation to show that he has sustained any loss or damage through the interdict process. 3. The furniture in question, if not now available to the appellant, has been lost owing to his own delay, or through causes for which the respondent is not liable."

Solicitor-General (Bethell), and *Rolt* Q.C., for appellant.—According to the true construction of the bond given by the respondent, he rendered himself liable to the appellant for the damages resulting from the wrongful interdicting, and as those damages included the loss of the furniture, the appellant was entitled to recover its value. Unless such is the construction of the bond, the granting of bonds of caution in this way, and in similar terms, must be a mockery. If Anderson had not interfered we should have realized our debt and sold the furniture, but in consequence of his interfering we have lost it. His interference was quite groundless, as the result showed. This was not like the class of cases where interdict is granted without security *periculo petentis*,

and where *mala fides* must be proved to make the interlocutor liable in damages, as in *Moir* v. *Hunter*, 11 S. 32. The case of *Lord Elibank* v. *Renton*, 11 S. 238, is like the present case, and illustrates the distinction fully. Here, however, the question of *mala fides* is immaterial, and the sole point to be considered is—Was the interdict, granted at the instance of the respondent and Anderson, not the cause of the appellant losing the proceeds of the furniture, and thereby losing the opportunity of paying himself the debt? It is said we showed remissness in not following up the diligence when the interdict was recalled, but it was no duty of ours to follow up the poinding at all. We had a right to say to the Court—We have sustained damages by reason of the interdict, and as Douglas entered into a bond of caution he must make good to us those damages.

[LORD ST. LEONARDS.—The bond says "damages," and also "interest and expenses." Do you say you ought to have these?]

The measure of damages would be, in fact, the amount of the debt, and all we ask is the amount we ought to have received at the time the interdict was granted, and would have received but for the interdict, and the interest thereon.

[LORD ST. LEONARDS.—You have been offered all the damages which the Court of Session thought you entitled to, viz., £4 9*s.* 1*d.*, being the amount of the additional expenses incurred prior to the interdict at the instance of Gordon, junior. Can you appeal from an interlocutor of the Court on the ground that these damages are too small?]

[LORD CHANCELLOR.—Just so; the bond says, "whatever sum the Court of Session shall modify and award in name of," &c. Now if the Court of Session went on a wrong principle in awarding these damages, can you come here and make that a subject of appeal? Have you any instance of an appeal brought on that ground?]

We know of no instance; but it is absurd to say the Court of Session would find the measure of damages to be £4 9*s.* 1*d.*, if they thought the interdict of Anderson was the cause of the damage. Lastly, even assuming we were bound to follow up our diligence, which we say we were not, then we were not guilty of any negligence in doing so, for we followed it up with reasonable promptitude.

Sir F. Kelly Q.C., and *Anderson* Q.C., for respondent.—This is not a case in which an appeal lies to this House. The bond was given to pay whatever the Court of Session should award in name of damages, and it was obviously intended, that whatever the Court should consider fit to be awarded was to be final and conclusive. The House will not review the discretion exercised by the Court, for the Court might have awarded any sum it thought fit without giving any reasons. It is not, properly speaking, a judicial act at all. It is a matter of mere practice; and it is a well known rule that the House will not overrule a decision of the Court below in a point of practice, without the very strongest case being made out.—*Magistrates of Annan* v. *Farish*, 2 Sh. & M'L. 930. Besides, the Court below thought the appellant had not used sufficient diligence in following up the poinding, and it is obvious from the facts of the case that the appellant had slept on his rights, and has himself to blame for the result. There was no wrongous interdiction at all on the part of Anderson. The other side say that wrongous means unsuccessful, but that is quite a mistake; it means malicious, and here no malice is suggested.

LORD CHANCELLOR CRANWORTH.—My Lords, in the month of July 1846 the present appellant, Mr. Buchanan, recovered judgment in Scotland against Mr. Gordon for a small sum of money, the amount recovered and expenses being about £30. In the month of September 1846 he obtained process, and caused the furniture, which he took in execution, to be advertised for sale on the 26th of that month. But before the sale took place, a gentleman of the name of Anderson interposed to stop the sale, upon the allegation that the furniture so taken in execution was his property, and not the property of Gordon, the debtor. And applying to the Court so to stop the sale, he obtained a decree of suspension and interdict to stop the sale, upon the ground that the goods were his, and not the goods of Gordon. There was an interlocutory application, and relief was granted only upon the condition of Anderson entering into a bond with one surety and one attestor, as it is called—substantially another surety.

The words of the bond into which Anderson entered are these:—Douglas bound himself "to pay whatever sum the Lords of Council and Session shall modify and award in name of damages, in case of wrongous interdicting in a note of suspension and interdict between the said parties, and that in case it shall be found by the Lords of Council and Session that he ought so to do after discussing," and so on—that is to say, an interdict was granted at the instance of Anderson only upon the terms of Anderson with two sureties, one of those sureties being Douglas, the present respondent. I may say, therefore, upon the terms of Douglas entering into a bond to pay to Buchanan, or to any other person that the Lords of Council and Session may direct, whatever sum the Lords of Council and Session shall modify and award in name of damages, in case of wrongous interdicting in a note of suspension and interdict, in case it should be found that they were entitled to any damages.

My Lords, the proceedings in the Court of Session in respect of this small demand of £30, on the question, whether these were goods that Buchanan might lawfully take in execution for the

debt of Gordon or not, seem to have occupied a most extraordinary length of time. For the proceedings having commenced in the month of September 1846, it was not till the 22d of December 1848, two years and a quarter afterwards, that the question was finally disposed of by the Lords of Session deciding that the goods were the goods of Gordon, or, at all events, that they were goods which Buchanan was entitled to take in execution for the debt of Gordon on that occasion, and accordingly, as we should say in England, dissolved, as they say in Scotland, recalled, the interdict.

Then, my Lords, what were Buchanan's rights under that bond? The interdict was recalled upon the 22d of December, and he proceeded to, what we should call in England, revive, but what they call in Scotland, waken, the process—that is to say, set it on foot again. That occupied three or four months, and it was not till the month of April 1849 that he proceeded again to advertise the sale of these goods. He was then stopped by another interdict at the instance of another person claiming a right to these goods. And thereupon Buchanan instituted a proceeding in the Court of Session upon the bond, in order, by virtue of that bond, to recover payment of the expenses of the proceedings against Anderson and the sureties. With regard to Anderson your Lordships have no concern at present. Therefore we may take it as a suit against Douglas, the surety, only. Buchanan seeks to obtain, by means of that bond, satisfaction of the original debt recovered against Gordon, and the costs of the subsequent proceedings. The Lord Ordinary held that Buchanan was so entitled. But upon the matter coming before the Court of Session, they were of opinion that he was not entitled—that is to say, they considered that there had been no wrongous interdicting which entitled him to damages, except in respect of a small sum on account of some expenses that had been incurred, amounting to £4 9*s.* 1*d.* They considered that he was entitled to that sum, but that he was not entitled to any other damages resulting from the interdict. All the Lords of Session were of opinion that, although it was true that a stoppage was put upon Buchanan's proceedings, yet that that stoppage did not arise from the interdict that had been granted in September 1846, but that it arose from Buchanan not having been sufficiently vigilant after the interdict was recalled in December 1848, in proceeding then and there to enforce his execution; in consequence of which another person, Gordon, junior, had, in the month of April 1849, wrongfully interposed to stop him in respect of a transaction to which the original interdict had no reference. That was the view taken by the Court of Session, and they consequently held, I may say substantially, that there were no damages which he was entitled to recover. It is true there were certain expenses, which all parties admitted he ought to have, amounting to £4 9*s.* 1*d.*; but the Lords of Session held that that was the only sum to which he was entitled. It is against that decision of the Lords of Session that Buchanan has appealed to this House.

My Lords, that a case of this sort of extremely minute importance, originating in a debt of £23, should have been carried through the Courts of Scotland, and occupied them for so long a time, and now, after the lapse of nine years from the commencement of the suit, should be argued for a day and a half at your Lordships' bar, is a matter deeply to be deplored. Of course I need not say that your Lordships will do what appears to you to be just in this case; and if you see your way to the conclusion that the Lords of Session have come to a wrong determination, it will be your duty to say so, whatever may be the consequences. *Fiat justitia:* at the same time, I think, in a case of this sort, your Lordships ought to be perfectly satisfied that the Court was wrong, before we interpose to help a person carrying on a proceeding of this sort for an original debt nine years ago of £23 through all the Courts of Scotland, in the way this case has been carried on.

Now, my Lords, although I will not deny that in the course of the argument I have had doubts as to the course which I should recommend your Lordships to pursue, I have finally come to the conclusion that there is no reason whatsoever which ought to induce your Lordships to disturb the decision of the Court below. I come to that conclusion on these grounds. The bond which Mr. Anderson was required to produce, together with the surety, was not a bond simpliciter to indemnify Buchanan against the consequence of the interdict. If that had been so, it might have been open to the argument urged by Mr. Rolt yesterday at your Lordships' bar, that the moment the interdict was dissolved, as we should say in this country, an action would lie, and Buchanan would be entitled to say—"If you had not interdicted me I should have had the money in my pocket now to which I am entitled. If you will indemnify me, you are bound to put that money into my pocket which I should have had by virtue of the former execution." But that is not the form, nor, as I understand it, the intention of the bond. The bond is to help the Court, as it were. The Court is asked to interdict, and the Court says—The interdict shall be granted upon these terms: You shall procure sureties who shall bind and oblige themselves to pay to the pursuer, or any other person to whom they may be ordained to pay, whatever sum the Lords of Council and Session shall modify and award in the name of damages, in case of wrongous interdicting and suspending, and in case it shall be found by the Lords of Council and Session that they ought so to do.

Now that being the bond that is given, when the matter has been fairly discussed by the

Court of Session, and they are of opinion, looking at the circumstances of the case, that there has been no damage occasioned by the interdict, I do not think that it was ever the intendment of that bond that it should ever by possibility be carried further. What is alleged here is, that the Lords of Session proceeded to assess the damages upon an erroneous principle. But if your Lordships were to listen to this application in the present instance, I do not know what is to prevent an appeal upon a future occasion. Because, when the Lords of Session have taken upon themselves to say damages have been incurred, and we think they amount to £100, there may be an appeal to your Lordships' House, stating that the damages ought to have been £500. There would be no end to the questions of that sort which might be brought before your Lordships. The very nature and condition of this bond, which was, that the parties were to pay such damages as the Court should award, seem to me to point irresistibly to the conclusion, that the finding on that subject was to be absolutely conclusive and final, because the amount of damages is a matter that never can be legitimately made the subject of appeal.

Therefore, my Lords, even if I were satisfied that the Lords of Session proceeded upon erroneous grounds, I should still say that upon this bond no relief could be had upon this appeal. But I wish very much to guard myself against being supposed that I do come to the conclusion, that the Lords of Session, upon this bond, have decided erroneously and differently from the mode in which I should have myself decided. What the Lords of Session had to do was to look at the circumstances of the case, and say what amount of damages, if any, had been incurred by wrongous interdicting. Now I can easily understand that there might have been a state of circumstances which would have made it the duty of the Lords of Session to say why the quantum of damages will be the whole amount of your debt, because, before the interdict, you had the means of obtaining the goods in your own hands, but you have now lost these means. If it had been the fact, that before the interdict the goods were worth a sum of money that would have paid your debt, and now they are not worth half that sum, you ought to be absolved from any proceeding of the Court. But here it turns out that the goods were not worth the same amount at the end as they were at the beginning. And there is no manner of doubt that the plaintiff Buchanan might, immediately after the 22d of December, if he had thought fit, have resumed the execution, put it in force, and paid himself the sum which he claimed, just the same as in the month of September 1846. Therefore the Lords of Session came to the conclusion, that with the exception of a small sum in the shape of expenses, there were no damages legitimately within the description of damages resulting from wrongous interdicting.

I rather think that the Lords of Session were right in that conclusion. I do not trouble myself to come to any final decision upon that point, because, whether they were right or wrong, it is not a subject upon which your Lordships ought, or can be legitimately called upon, to adjudicate by way of appeal, upon that which I conceive to be the final decision of the Court of Session. I move your Lordships that the interlocutor be affirmed.

LORD BROUGHAM.—My Lords, I entirely agree with my noble and learned friend in the view which he takes of this case. The note of suspension was presented without caution or consignation. It then went before Lord Cunningham, as Lord Ordinary on the Bills, and he, as it is called, sisted execution, and granted the interdict, reserving the consideration of the caution. Then Lord Ivory, before whom it afterwards comes, passes the note, on condition that caution be found within ten days. Caution is then found, by order of the Court, which, as my noble and learned friend stated, makes the party entering into the bond of caution a guarantee for the performance of whatever the Court shall thereafter direct in the matter. By that bond the amount to be paid is to be "whatever sum the Lords of Council and Session shall modify and award in name of damages in case of wrongous interdicting;" and afterwards also, "whatever sum the said Lords shall modify in name of damages and expenses in case of wrongous suspending."

The Court have, upon a full consideration of the matter, come to the conclusion, that in one respect no damages shall be given at all, and that in another respect the sum offered to be paid of £4 9*s.* 1*d.* is sufficient, and that that shall stand as the damages and expenses to be found in accordance with the condition of the obligation.

My Lords, I hold in this case with my noble and learned friend, that though it is a most truly lamentable matter to see that upon so very trifling a sum as that which is involved in this case, there should have been an eight or nine years litigation, running through the various processes in the Court below, and ending in an appeal in this House, yet that if there has been error committed in the Court below, and that error appears clear to your Lordships, you have no choice but to reverse or to alter the interlocutor complained of.

But, my Lords, in the first place, I consider that the Court below are right in the view which they take of this case. In the next place, I consider that very much here depends upon the practice in the Court below. Now none of the learned Judges, hardly even excepting Lord Robertson, the Lord Ordinary, but certainly none of the three learned Judges before whom the case came in the Inner House, and by reason of whose interlocutor the present appeal is before your Lordships, had any doubt whatever upon that practice which was so well known to them, that there was no ground for damages in this case. It would be a very difficult thing indeed to

persuade me, even if the sum were a larger one, that we ought to reverse their finding, and to absolve the obligor in the bond of caution from that which he had undertaken to pay in respect of whatever the Court below should award in the name of damages and expenses. Taking the case as if it had been before us for the first time, and we had been only referred to the authorities and to the practice as we have been here, it would be a strong thing to say that I differed from the view entertained by the Court below upon it, and that I should not, even if it had been before us in the first instance, have come to the same conclusion. It would be a far stronger thing to say that I thought the Court below, upon a matter very much of their practice, had come to an erroneous conclusion, and by the result of that to absolve the cautioner from the obligation which he had incurred.

My Lords, I must say, that so far as my opinion goes, I desire it to be very distinctly understood that I do not partake of the doubt expressed by one of the learned Judges in the Court below with respect to the *bona fides* in this case. It is to me a new doctrine which would make a distinction between the obligation of a cautioner for an interdict obtained *bonâ fide*, and for an interdict held to have been unduly and improperly obtained, and therefore set aside. It is new to me that that question of *bona fides* can thus be entered into; and I hold, at any rate, we should be slow to countenance that doctrine even upon the statement of a doubt by one of the learned Judges. But that question is not before us; we are not called upon to dispose of it in one way or another. I only thought it right to enter my protest against its being understood that I partook of the doubt.

My noble and learned friend who was present yesterday (LORD ST. LEONARDS) takes entirely the same view of this case.

Interlocutor affirmed, with costs.

Appellant's Agent, John Cullen, W.S.—*Respondent's Agent*, J. B. Douglas, W.S.

MARCH 22, 1855.

WILLIAM BAIRD and Others, the Provisional Committee, *Appellants*, *v.* ROBERT ROSS and Others, Shareholders in the "Kilmarnock and Ayr Direct Railway Co.," *Respondents.*

Et è contra.

Railway—Subscribers' Agreement—Provisional Committee, Powers of—Costs of Bill in Parliament—*A provisional committee promoted a railway bill before parliament in* 1846, *and then withdrew it. They promoted a second bill for the same purpose in* 1847, *which was thrown out. The agreement was to promote the undertaking until an act of parliament shall be obtained for carrying the same into execution.*

HELD (reversing judgment), *though the majority of the subscribers disapproved of the second application for a bill, that the expenses of the first bill and also those of the second were a good charge upon deposits paid up before the first application to parliament.*

Contract—Promise to form Company—Repayment—*Where A gets subscriptions in order to form a company, and fails to do so, the subscribers can get their money back: but if A stipulated that he is to be reimbursed out of the funds, then he may set up as an answer to the subscribers, that he tried to form a company, but failed.*[1]

The pursuers appealed against the judgment of the Court of Session, maintaining in their case that it ought to be reversed—"1. Because the deed of agreement and subscription contract, executed by the parties to whom the scrip for the shares in the proposed 'Kilmarnock and Ayr Direct Railway Company' was issued, empowered the provisional committee to make a 'second application' to parliament for an act necessary for carrying into effect the projected undertaking, and to defray the expenses thereof from the deposits paid by the scripholders. It therefore followed, that, in accounting for the deposits, the appellants are entitled to deduct the expenses, whether the scrip for shares on which deposits were paid is held by original parties or has been transferred to others, as is the case with the respondents. *Garwood* v. *Ede*, 1 Exch. 264; *Jones* v. *Harrison*, 2 Exch. 52; *Vane* v. *Cobbold*, 1 Exch. 798; *Willey* v. *Parrat*, 3 Exch. 215. 2. The proceedings of the appellants, acting as the provisional committee, were taken by them, in conformity with the will of the shareholders, as declared at their meetings. And the powers

[1] See previous report 22 Sc. Jur. 602. S. C. 2 Macq. Ap. 61; 27 Sc. Jur. 342.