once use the unfortunate metaphor that the tug may for many purposes be considered as part of the ship to which she is attached. He says "for many purposes" —not all. He does not say that it is to be considered that the plain words of a contract are to be misinterpreted. Had he foreseen what use would be made of his words, he would not have used them.

It is said the parties to this suit knew all about this, and contracted on the footing of it. Now, this seems to me to be a case too common, in which there is a tendency to depart from the natural primary meaning of the words and to add to or take from them —that, constructively, words mean something different from what they say. It introduces uncertainty. No case is desperate when plain words may be disregarded. I deprecate this in all cases. In this particular one I believe it will be attended with at least this injustice, that the parties did not contemplate the case that has occurred, and perhaps would have raised the premium if they had. That they did not contemplate it I infer from the words that they used. Ingenious cases were put forward in which there might be damage with the "Niobe" without her touching the vessel damaged, as where she pushed an intermediate vessel against that damaged. I have no doubt that ingenuity will suggest many difficult cases. I content myself with dealing with the present, where the ship did not in any sense come into collision with any other ship and cause damage. I think the judgments should be reversed.

Their Lordships dismissed the appeal with costs.

Counsel for the Appellant—Finlay, Q.C. —Walton. Agents—Waltons, Johnson, & Bubb, for J. & J. Ross, W.S.

Counsel for the Respondent — Sir R. Webster, Att.-Gen. — Gorell — Barnes — Leck. Agents—Lowless & Company, for Webster, Will, & Ritchie, S.S.C.

Thursday, March 19.

(Before Lords Herschell, Watson, Macnaghten, Bramwell, Morris, and Hannen.)

RITCHIE & COMPANY *v.* SEXTON.

(*Ante*, March 18, 1890, 27 S.L.R. p. 536, and 17 R. 680.)

Reparation — Slander—Innuendo—Issue—Question of Construction Left to Jury.

A person who objected to certain questions put in the House of Commons by a member of Parliament, wrote remonstrating with him for traducing him by false charges which the questions implied to be true. The writer illustrated his case by supposing that he should induce an opponent of his correspondent to put questions in the House of Commons implying that his correspondent had had *delirium tremens* and had been intoxicated in public, and declared that such a course would be as much justified as that to which the writer objected. He disclaimed all intention of giving pain "by the recital of these imaginary stories."

The letter was published in a newspaper, and the member of Parliament sued the proprietor of the newspaper for damages, on the ground that the letter represented him to be a drunkard.

The defender objected to an issue being allowed and put to a jury, on the ground that the true and obvious meaning of the letter was not to impute anything to the pursuer, but only to put a suppositious case.

Held (*aff.* the decision of the First Division) that the pursuer was entitled to an issue, as the letter was capable of being understood in a libellous sense, and that it was for the jury to determine whether there was libel or not.

This case is reported *ante*, March 18, 1890, 27 S.L.R. p. 536, and 17 R. 680.

The defenders Ritchie & Company appealed.

At delivering judgment—

LORD HERSCHELL—This is an appeal from an interlocutor in which it was held that in an action for libel brought by the respondent against the appellants there was an issue fit and proper to be submitted to a jury. The only question which your Lordships have to consider is, whether that determination of the Court of Session was correct? All that has been decided is that there is such an issue which the jury will have to consider and determine, and there is no controversy about the law which governs a case of this description. If the statements or letter which is charged to be libellous be of such a nature that it is capable of a construction which would be libellous in point of law — if it contains matter which is capable of such a construction that it might be read by reasonable men as libellous in point of law—then it is for the jury to determine whether a case has been made out, and the Court cannot stop the case at its inception and prevent a verdict of a jury. The question therefore resolves itself into one of simple construction, what interpretation might reasonably be put upon the document in question. I believe all your Lordships are agreed that the Court below was right in coming to the conclusion that the case could not be withdrawn from the jury, and that it was right to direct an issue. That being so, it would be obvious that there are reasons for not giving a detailed statement of the views which have led your Lordships to that conclusion, inasmuch as if the case is to be tried before a jury the reasons which would be given by your Lordships would be arguments which might be regarded in the light of prejudging the very question which would have to be determined by a jury. Therefore I do not propose to give any reasons for the conclusion at which I

have arrived, which is, that the letter is capable of being understood in a libellous sense, and that therefore it is for the jury to determine whether there is a libel or not. For these reasons I move that the judgment be affirmed, and the appeal dismissed with costs.

LORD WATSON — I entirely concur. I desire to express no opinion as to whether these letters are libellous. All that my judgment implies is that there is a question which a jury and not the Court ought to try.

LORD BRAMWELL, LORD MACNAGHTEN, LORD MORRIS, and LORD HANNEN concurred.

Their Lordships dismissed the appeal with costs.

Counsel for the Appellants—Sir Henry James, Q.C.—Cooper. Agents—Neish & Howell, for Henderson & Clark, W.S.

Counsel for the Respondent—Sir Charles Russell, Q.C.—Shaw. Agents—Waddy & Waddy, for R. Ainslie Brown, S.S.C.

Tuesday, June 9.

(Before the Earl of Selborne, and Lords Watson, Bramwell, and Herschell.)

BANK OF SCOTLAND *v.* DOMINION BANK, TORONTO.

(*Ante*, vol. xxvi. p. 753, and 16 R. 1081.)

Bill of Exchange—Payment and Discharge — Cancellation Without Authority — Agent—Liability of Agent Employed to Collect Bill.

A bill having been protested for non-payment was afterwards forwarded to a bank agent who offered to try and obtain payment of it. The acceptors expressed their willingness to pay the amount of the bill and the protest charges on condition that they were freed from any claim for interest and expenses, and this condition was communicated to the holders. Without waiting for their reply the bank agent took payment of the amount of the bill and the protest charges, marked the bill "paid," and handed it over to the acceptors, who deleted their signatures. The holders refused to agree to the condition mentioned, returned the money tendered to them in payment of the bill, and received back the cancelled bill. They then raised an action against the acceptors, in which they obtained decree for the amount of the bill and interest thereon, and for the expenses of the action. Before this decree could be enforced by summary diligence the acceptors were sequestrated.

In an action by the holders against the bank whose agent had cancelled the bill, for payment of the bill, the interest thereon, and the expenses of the action against the acceptors, the House of Lords *held* (*aff.* the decision of the First Division) that the defenders were liable, as the evidence showed that if the bill had not been cancelled without authority through the error of their agent, the holders might have recovered payment by summary diligence before the acceptors were sequestrated, and further ordered the pursuers to assign to the defenders any remedy they might have against the drawers of the bill.

This case is reported *ante*, vol. xxvi. p. 753, and 16 R. 1081.

The Bank of Scotland appealed.

At delivering judgment—

EARL OF SELBORNE—My Lords, I confess it is with some regret—because I think the case is rather a hard one upon the Bank of Scotland—that I feel myself compelled to come to the conclusion that the judgment in this case is right, though I think it should be amended without prejudice to the costs of the appeal by introducing words which will require effect to be given in the offer which was made in the Inner House to subrogate the appellants to any right and remedy which may remain upon the bill against the drawers.

My Lords, in the view which I take of the case it may be put thus—First of all, has there been a loss sustained? It appears to me clear that there has been a loss, arising no doubt immediately out of the bankruptcy of the judgment debtor; and for this purpose I cannot but think myself that this case should be dealt with upon the footing of the right of the holder of the bill against the acceptor, and without drawing in any question as to whether an action against the drawers in Canada might have been successful or not, or to what extent; but that there has been an actual loss arising immediately from the bankruptcy of the judgment debtor, and that the measure of that loss *primâ facie* is that which the Court below have assumed, namely, the whole debt *minus* the interest, appears to me to be unquestionably clear.

Then, my Lords, what was the cause of that loss? I think myself, upon the evidence (differing here from Lord Mure, but agreeing with the rest of the Court), that the cause of the loss was the delay of the remedy—I mean the summary remedy which would have existed if the bill had not been on the face of it cancelled. I cannot think that more evidence as to the possibility of having made that summary remedy effectual, if it existed, than that which was given, can be required. The debtor was a man engaged in business, carrying on business, paying his way and paying considerably larger sums, according to the evidence, than that in question until some considerable time after the action was brought, and it appears that on the 12th of July 1887 (a matter which is not noticed by Lord Mure in his judgment) a positive offer was made to pay down immediately—that is, the next day—the whole principal sum due upon the bill on the condition of the waiver of the right to the interest.